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इस भाग में भिन्न पृष्ठ संख्या वी जाती है जिससे कि यह अलग संकलन के क्षेत्र में
रखा जा सके

Separate Paging is given to this Part in order that it may be filed as a
separate compilation

भाग II—खण्ड 3—उप-खण्ड (iii)
PART II—Section 3—Sub-section (iii)

(संघ राज्य क्षेत्र प्रशासनों के छोड़कर) के द्वारा जारी किए गए आदेश और अधिसूचनाएं
Orders and Notifications issued by Central Authorities (other than Administrations of Union
Territories)

नई विल्सी, 7 नवम्बर, 1990

आदेश

भारत निर्वाचन आयोग

आ. अ. 31.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथाविनिर्दिष्ट विधान सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) विनिर्दिष्ट निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन घड़ने वाला प्रत्येक अध्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तमीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्यर्थों का नेतृत्व समय के प्रत्यंगत श्री/अथवा अपेक्षित रीति से या कोई भी लेखा दाखिल करने में असफल रहा है,

और उक्त अध्यर्थियों ने सम्पर्क सूचना दिए जाने पर भी उक्त असफलता के लिए या तो कोई कागज अथवा स्पष्टीकरण नहीं दिया है या उनके द्वारा दिए गए अध्याश्रेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पाम उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित नहीं है,

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट अपेक्षित व्यर्थों को संसद के किसी भी सत्र के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य द्वारा जाने और होने के लिए आदेश की तारीख से तीन दर्पण की कालावधि के लिए निरहित घोषित करता है।

सारणी

क्रम.सं.	निर्वाचन का विवरण	निर्वाचन क्षेत्र की क्र. सं. और निर्वाचन लड़ने वाले अध्यर्थी का नाम	निरहृता का कारण	
1.	2.	3.	4.	5.
1.	तमिलनाडु विधान सभा का साधारण निर्वाचन, 1989	192-ग्रालंगुडी	सर्वश्री एम इलंगोबन नादग लेन अप्पनारूपुरम पुडुक्कोट्टाई जिला (तमिलनाडु)	विधि द्वारा अपेक्षित रीति में दाखिल नहीं किया।
2.	-वही-	206 विरुद्धुनगर	के. ग्रलगरसामी नायेकर, 84 ए.कूरा-एकुडु पुडुक्कोट्टाई, जिला (तमिलनाडु)	कोई भी लेखा दाखिल नहीं किया।
3.	-वही-	206 विरुद्धुनगर 1989	श्री एम थंगराज पांडियन 175-एच पांडियन नगर, विरुद्धुनगर पुडुक्कोट्टाई जिला तमिलनाडु।	-वही-
4.	-वही-	--वही--	श्री एस. नागराजन, 6 संदाइप्पेट्टाई स्ट्रीट विरुद्धुनगर पुडुक्कोट्टाई जिला तमिलनाडु।	-वही-
5.	-वही-	211 ओट्टापीडारम (अ.जा.)	श्री के. ए. थंगाबेल सुपुत्र श्री अप्पन् वालमपट्टी, कीला इराल पोस्ट ओट्टापीडारम तालुक चिव्वरमराम जिला तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति और समय के भीतर
6.	-वही-	-वही-	इ. सुदलिमासुथु, सुपुत्र श्री एस-स्किमुथु, वाडकुसुब्रमनयम प्रम, तालुक ओट्टापीडारम चिव्वरमराम जिला तमिलनाडु।	कोई भी लेखा दाखिल नहीं किया।
7.	-वही-	227 टूटिकोरिन	आई. थंगापालम, 23/लीश्वानगर 2 स्ट्रीट टूटिकोरिन-8	लेखा विधि द्वारा अपेक्षित रीति में दाखिल नहीं किया।
8.	-वही-	228 कन्याकुमारी	कोडिक्कल चेलाप्पा, कोडिक्कल इथामोझी (पो. आ.) कन्याकुमारी जिला नमिलनाडु	कोई भी लेखा दाखिल नहीं किया।
9.	-वही-	-वही-	वी.थंगासारी 17/17 सी माधवपुरम कन्याकुमारी जिला तमिलनाडु।	-वही-
10.	-वही-	229-नागरकोइल	पी. रामचन्द्रन कदमपाराविलकाथुपुथन, वीडू, नाल्लोर मुलंकुमी पोस्ट कन्याकुमारी जिला तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति से दाखिला नहीं किया।
11.	-वही-	-वही-	ननगिल दुराई, 55 ननगिल स्टेट पेट्टनगुडी मत्रास, 600096 तमिलनाडु।	-वही-
12.	-वही-	-वही-	जे.फासिस 3 थिरुक्कुडुम्पा स्ट्रीट पश्चिम रामापूथूर, नेगर कुइल, कन्याकुमारी, जिला तमिलनाडु।	-वही-
13.	-वही-	230 कोलाचेल पी	सूसाई मिटोप्रल सुपुत्र श्री पुष्पाधासन सदायतुपुथुर पो. आ. कन्याकुमारी जिला तमिलनाडु।	कोई भी लेखा दाखिल नहीं किया।

1	2	3	4	5
14.	तमिलनाडु विधान सभा का साधारण निर्वाचन 1989	231 पदभानाभाष्यरम	ए. चेनपागरमन, कीझाकरूप्पुकोड चुनकाकाडीई पो. आ. कन्याकुमारी जिला तमिलनाडु।	कोई भी लेखा दाखिल नहीं किया।
15.	—वही—	—वही—	डी के गुरजे बाटाविलाई काप्पिचाराई पो. आ. कन्याकुमारी जिला तमिलनाडु।	—वही—
16.	—वही—	232 थिरुवट्टाटर	सी हेतरी हेतसी इलम कोनबेंट जंशन कुलासेकरम कन्याकुमारी जिला तमिलनाडु।	—वही—
17.	—वही—	—वही—	श्री वी. मधुसूधनन नायर, 6/9 ए थैक्केवीडू थिरुन यिकाराई कुलासेकरम, (पो. आ.) कन्याकुमारी जिला तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति से दाखिल नहीं किया।
18.	—वही—	233 विलात्कोड	डी. सोमाणेखरन नायर सुपुत्र श्री वामोदरन नायर इडमेरी वीडू, रामावरम ओरा, मेलपालाई (पो. आ.) कन्याकुमारी जिला तमिलनाडु।	—वही—
19.	—वही—	—वही—	के. दसायन सुपुत्र श्री कोचू वीडू थेकू-मूला साठनकोडे (पो. आ.) कन्याकुमारी जिला तमिलनाडु।	—वही—
20.	—वही—	234 किलियूर	पी. सेलवाराज, काक्काचिविलाई पाल्लूर, कारुगल कन्याकुमारी जिला तमिलनाडु।	—वही—
21.	—वही—	—वही—	पी. थापासिमथु, पाशावार, कुष्णोथुराई कन्याकुमारी जिला तमिलनाडु।	—वही—
22.	—वही—	—वही—	एम. मोहम्मद बशीर, वालाविलागम, थेगांपट्टनम कन्याकुमारी, जिला (तमिलनाडु)	—वही—

[सं. 76/त. ना.—वि. स./89 (1-22)]

**ELECTION COMMISSION OF INDIA
ORDERS**

New Delhi, the 7th November, 1990

O.N. 31.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Legislative Assembly specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses, within the time and in the manner or has not lodged the account at all as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

Sl. No.	Particulars of election	S. No. and Name of constituency	Name of contesting candidate	Reason for disqualification
1	2	3	4	5
		S/Shri		
1.	General Election to Legislative Assembly, 1989.	192-Alangudi	M. Ilangovan Nadar Line, Ayyanarupuram, Pudukkottai Distt. (Tamil Nadu)	Account not lodged in the manner required by law.
2.	-do-	206-Virudhunagar	K. Alagarsamy Naicker, 84-A, Kooraikudu, Pudukkottai Distt. (Tamil Nadu)	Account not lodged at all.
3.	-do-	-do-	M. Thangaraj, 175-H, Pandian Nagar, Virudhunagar, Pudukkottai Distt. (Tamil Nadu)	-do-
4.	-do-	-do-	S. Nagarajan, 6, Sandaipetti Street, Virudhunagar, Pudukkottai Distt. (Tamil Nadu)	-do-
5.	-do-	21-Ottapidaram (SC)	K.A. Thangavel, S/o Sh. Ayyanu, Valampatti, Keela Iral Post, Ottapidaram Taluk, Chidambaram Distt. (Tamil Nadu)	Account not lodged within the and in the manner required by law.
6.	-do-	-do-	E. Sudalaimuthu, S/o Sh. Esakkimuthu, Vadakkusubramaniaipuram, Taluk, Ottapidaram, Chidambaram Distt. (Tamil Nadu)	Account not lodged at all.
7.	-do-	227-Tuticorin	I. Thangapazham, 23/LI, Annanagar 2nd Street, Tuticorir-8	Account not lodged in the manner required by law.
8.	-do-	228-Kanniyakumari	Kodikkal Chellappa Kodikkal, Eathamozhy (P.O.), Kanniyakumari Distt., (Tamil Nadu)	Account not ledged at all.
9.	-do-	-do-	V. Thangasamy, 17/17-C, Madhavapuram Kanniyakumari Distt., (Tamil Nadu)	-do-

1	2	3	4	5
10.	General Election to Tamil Nadu Legislative Assembly, 1989.	229-Nagercoil	S/Shri P. Ramachandran Kadamparavilakathuputhen, Veedu, Nallor, Malankazhi post, Kanniyakumari Distt., (Tamil Nadu)	Account not lodged in the manner required by law.
11.	-do-	-do-	Nangil Durai, 55, Nangil Estate, Perungudi, Madras-600096.	-do-
12.	-do-	-do-	J. Francis, 3, Thirukkudumba Street, West Ramapputhoor, Nagercoil, Kanniyakumari Distt., (Tamil Nadu)	-do-
13.	-do-	230-Corachel	P. Soccsai Michael S/o Sh. Pushpadhasan, Sadayalputhur, Vembanoor P.O. Kanniyakumari Distt. (Tamil Nadu)	Account not lodged at all.
14.	-do-	231-Padmanabha- puram	A. Chenpagaraman, Keezhakaruppucode, Chunkankadai P.O. Kanniyakumari Distt.. (Tamil Nadu)	-do-
15.	-do-	-do-	D.K. Goorge, Vattavilai, Kappiyarai, Post Office, Kanniyakumari Distt. (Tamil Nadu)	-do-
16.	-do-	232-Thiruvattar	C. Henry, Hensi Illam, Convent, Junction Kulasekaram, Kanniyakumari Distt., (Tamil Nadu)	-do-
17.	-do-	-do-	V. Madhusoodhanan Nair, 6/9A, Thekkevedu, Thirunanthikkarai, Kulasekaram (P.O.) Kanniyakumari Distt., (Tamil Nadu)	Account not lodged in the manner required by law.
18.	-do-	233-Vilavancode	D. Somasekharan Nair, S/o Sh. Damodharan Nair, Edasery Veedu, Ramavaram Chira, Melpaiai (P.O.) Kanniyakumari Distt., (Tamil Nadu)	-do-

1	2	3	4	5
			S/Shri	
19.	General Election	233-Vilavancode to Tamil Nadu Legislative Assembly, 1989	K. Dasaian, S/o Sh. Kochu, Tharisuvilal-Veedu, Thekkumulla Code, Sathancode (P.O.) Kanniyakumari Distt. (Tamil Nadu)	Account not lodged in the manner required by law.
20.	-do-	234-Killiyoor	P. Selvaraj, Kakachivilai, Palloor, Karungal, Kanniyakumari Distt., (Tamil Nadu)	-do-
21.	-do-	-do-	P. Thapasimuthu, Pazhavaar, Kuzhithurai, Kanniyakumari Distt. (Tamil Nadu)	-do-
22.	-do-	-do-	M. Mohamad Basheer, Valavilagam, Thengapattanam, Kanniyakumari Distt. (Tamil Nadu)	Account not lodged at all.

[No. 76/TN/LA/89 (1-22)]

नई दिल्ली, 7. जनवरी, 1991

आ. अ. 32.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट विधान सभा के निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचनक्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन सङ्गे वाला प्रत्येक अध्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्दीन बनाए गए नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों का लेखा समय के अंतर्गत और अपेक्षित रीति से या लेखा बिल्कुल ही बाखिल करने में असफल रहा है;

और उक्त अध्यर्थी ने सम्बन्धी सूचना दिए जाने पर भी उक्त असफलता के लिए न तो कोई कारण, न स्पष्टीकरण ही दिया है या उनके द्वारा दिए गए अध्यावेदन पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असक्षमता के लिए कोई पर्याप्त कारण या न्यायोचित नहीं है;

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसारण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट अवितरणीयी की संसद के फिसी भी धरण के या विसी राज्य वी विधान सभा यथा विधान परिषद् के सदस्य चुने जाने आरहोने के लिए आदेश की तारीख में सीन वर्ष की कालावधि के लिए निरहित घोषित करता है।

क्रम संख्या	निर्वाचन का विवरण और नाम	निर्वाचन-क्षेत्र की क्रम. सं. और नाम	निर्वाचन लड़ने वाले अध्यर्थी का नाम और पता	निरहूंता का कारण
1	2	3	4	5
1.	तमिलनाडु विधान सभा के लिए साधारण निर्वाचन, 1989.	59-मुगाइश्पुर	श्री एम. पी पाश्वेरसेलवान, प्रम जानेयर कोइल स्ट्रीट कालियम- पूरदी और पोस्ट विल्पुरम तालुक दक्षिण आर्कोट जिला (तमिलनाडु)	लेखा बिल्कुल दाखिल नहीं किया
2.	-वही-	-वही-	सर्वं श्री एस. सुब्रमनी, सिहखाला अम्बेथकर स्ट्रीट, विल्पुरम तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति में दाखिल नहीं किया।
3.	-वही-	60-थिळनाकलुर	पी. अरुणामली, पुन्वी गांव, सीदेवी पोस्ट, पुलुन्दरपेट तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	लेखा बिल्कुल दाखिल नहीं किया।
4.	-वही-	-वही-	के. धन्दापानी, पेऱ्स्वाक्कम और पोस्ट पुलुन्दरपेट तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	-वही-
5.	-वही-	-वही-	के. वी. भुवरगामूर्ती, माटीमाई वानमपट्ट, पोस्ट पुलुन्दरपेट तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति में और समय के भीतर दाखिल नहीं किया।
6.	-वही-	61-उलुन्टुपेट (आ. जा.)	कन्दास्वामी उर्फ मिह मो., टी. पोष्ट्यूर गांव और पोस्ट विरधा- चलम तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	लेखा बिल्कुल दाखिल नहीं किया।
7.	-वही-	-वही-	टी. कुप्पन, पल्लावेचेरी गांव और पोस्ट कल्ला कुरची तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	-वही-
8.	-वही-	-वही-	एन. प्रशोकन, कूथनूर गांव, इलाई क्रेम पोस्ट, उलुन्टुपेट तालुक, दक्षिण आर्कोट जिला, तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति में व समय के भीतर दाखिल नहीं किया।

1.	2.	3.	4.	5.
9.	तमिलनाडु विधान सभा के 62-नेलीकुप्पमयम लिए साधारण निवाचन, 1989	सर्वश्री एस. दीरामुर्यीरन सुपुत्र सीनुरसन, नेलीथोपे, साथीपाट्टु, पोस्ट पानडी, ताल्लुक दक्षिण आर्कोट जिला (तमिलनाडु)।		लेखा बिल्कुल दाखिल नहीं किया।
10.	-वही-	-वही-	ए. परागसम सुपुत्र टी. मुनुस्वामी नं. 17, श्रवणपुरम नेलीकुप्पन दक्षिण आर्कोट जिला (तमिलनाडु)	-वही-
11.	-वही-	65-कुरिञ्जीपाड़ी	ए. म. राधा सुपुत्र मुथु नायडू, अग्राम कुल्लनचावदी मुहुलीर, दक्षिण आर्कोट जिला, तमिलनाडु।	-वही-
12.	-वही-	-वही-	ग्राम. वेंकटचलम सुपुत्र रामानुजम, पेरियाकुरिची नेयवेली- 2, दक्षिण आर्कोट जिला तमिलनाडु।	-वही-
13.	-वही-	-वही-	वी. जयकुमार सुपुत्र वेथरानयन, कुड्हालीर मेन रोड नेयवेली- 2 दक्षिण आर्कोट जिला तमिलनाडु।	-वही-
14.	-वही-	-वही-	ए. के. एम. रहमान सेट सुपुत्र सैयद रावूथार नं. 5-वी/ 276, मेन रोड नेयवेली- 2, दक्षिण आर्कोट जिला, तमिलनाडु।	लेखा विधि द्वारा अपेक्षित रीति से दाखिल नहीं किया।
15.	-वही-	-वही-	एम. पी. थंगावेल सुपुत्र वेथान, सी- 11, टर्बन रोड, ड्लाक नं. 26, नेयवेली दक्षिण आर्कोट, जिला तमिल नाडु।	लेखा विधि अपेक्षित रीति और समय के भीतर दाखिल नहीं किया।

1	2	3	4	5
16.	तमिलनाडु विधान सभा के लिए साधारण निर्वाचन,	67-कट्टुमन्नारकोइल (अ.जा.)	मर्वश्री प्रम कालिया मूर्ती सुपुत्र सुथकश्च, ओममपुलियूर और पोस्ट (वाया) आयनगुडी कट्टुमन्नार कोइल तालुक दक्षिण आर्कोट जिला तमिलनाडु।	लेखा बिल्कुल दाखिल नहीं किया।
17.	-वही-	69-वृधाचलम	सी. अरूमूगम, पेरियादायादी विजयम श्राम पोस्ट, वृधाचलम-606104 दक्षिण आर्कोट, जिला तमिलनाडु।	-वही-
18.	-वही-	-वही-	श्रार. राजेंद्रन 47/9 उमंगलम और पोस्ट वृधाचलम तालुक 607804 दक्षिण आर्कोट, जिला तमिलनाडु।	-वही-
19.	-वही-	-वही-	सी. चक्रापाणी, 5-ईस्ट स्ट्रीट उथंगल गांव और पोस्ट वृधाचलम तालुक दक्षिण आर्कोट जिला तमिलनाडु।	-वही-
20.	-वही-	-वही-	पी. शिळ्ना बक्ससाह कोमंगलम गमनवालनल्लूर पोस्ट, वृधाचलम तालुक दक्षिण आर्कोट जिला (तमिलनाडु)	-वही-
21.	-वही-	70-मंगलौर (अ. जा.)	सेलन, सुपुत्र नटराजन चोलन नगर पैन्नाडम् टीटागुडी तालुक दक्षिण आर्कोट जिला (तमिलनाडु)	लेखा विधि द्वारा अपेक्षित रीति से दाखिल नहीं किया।
22.	-वही-	-वही-	मूकन सुपुत्र भोट्टालन ग्रन्डेटकर नगर, पैन्नाडम टीटागुडी तालुक दक्षिण आर्कोट जिला (तमिलनाडु)	-वही-

1	2	3	4	6
23.	तमिलनाडु विधान सभा । 70-गलौर (ग्र.जा.) के लिए साधारण निर्वाचन, 1989।		सर्वे श्री एम. जयरामन सुपुत्र नूपन, परवालूर ग्रोर पोस्ट विरधाचलम तालुक दक्षिण आर्कोट जिला तमिलनाडु।	लेखा बिल्कुल दाखिल नहीं किया
24.	—वही—	71-कृषिवन्धियम	टी. अब्दुल बहाब सुपुत्र थम्बू साहिब 24-वी लक्ष्मिनाइकेनपट्टी और पोफकल्लाकुरची तालुक, दक्षिण आर्कोट जिला तमिलनाडु।	
25.	—वही—	73-संकरपुरम	टी. अब्दुल गहाब, सुपुत्र थम्बू साहिब, लक्ष्मिनाइकेनपट्टी पोस्ट कल्लाकुरची तालुक दक्षिण आर्कोट जिला तमिलनाडु।	—वही—
26	—वही—	126-कूनूर (ग्र.जा.)	ए. अम्मासन, 142-गांधी पुरम कूनूर नीलगिरी जिला उधगमंडलम तमिलनाडु।	—वही—
27	—वही—	—वही—	के. राजू, आवकी डिविशन नोनसव पोस्ट हुलीकल गांव नीलगिरी जिला उधगमंडल म (तमिलनाडु)	—वही—
28.	—वही—	207-शिवकासी	के. अथीमूलम सुपुत्र करुप्पासामी सेंगामलनवियर पुरम रोड़, थिरुथंगल सत्तूर तालुक कामराजन जिला तमिलनाडु।	—वही—

[सं. 76/तामिल-वि. स./89(1-28)]

आवेदन से,

सी. एल. रोज, सचिव

New Delhi, the 7th January, 1991

O.N. 32.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the Legislative Assembly specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge an account of his election expenses, within the time and in the manner or has not lodged the account at all as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

Sr. No.	Particulars of election	Sr. No. & name of constituency	Name of contesting candidate	Reason for Disqualification
1	2	3	4	5
1.	General Election to Tamil Nadu Legislative Assembly, 1989.	59-Mugaiyur	S/Shri M.P. Rannerselvam, Anjaneyar Koil Street, Kaliyamampoondi and Post, Villupuram Taluk, South Arcot District (Tamil Nadu).	Account not ledged at all.
2.	-do-	-do-	S. Subramani, Ambethkar Street, Siruvalai, Villupuram Taluk, South Arcot Distt. (Tamil Nadu)	Account not lodged in the manner required by law.
3.	-do-	60-Thirunavalur	P. Arulmani, Poondi Village, Seedevi Post, Ulundurpettaluk South Arcot Distt. (Tamil Nadu)	Account not lodged at all.
4.	-do-	-do-	K. Dhandaponi, Perumbakkam & Post, Ulundurpet Taluk, South Arcot Distt., (Tamil Nadu)	-do-
5.	-do-	-do-	K.V. Phuvaragamurthi Mattigai Vanampattu, Post Ulundurret Taluk, South Arcot Distt. (Tamil Nadu)	Account not lodged within the time & in the manner required by law.
6.	-do-	61-Ulundurpet (SC)	Kandaswamy alias Singh Mo. T. Podaiyur Village & Post, Vridhachalam Taluk, South Arcot Distt. (Tamil Nadu)	Account not ledged at all
7.	-do-	-do-	T. Kuppan, Pallagacherry Village and Post, Kallakurichi Taluk, South Arcot Distt. (Tamil Nadu)	-do-
8.	-do-	-do-	N. Asokan, Koothanur Village, Ellai Cramam Post, Ulundurpet Taluk, South Arcot Distt. (Tamil Nadu)	Account not lodged within time and in the manner required by law.

1	2	3	4	5
9.	General Election to Tamil Nadu Legislative Assembly-1989.	62-Nellikuppam	S/Shri. S. Veeraputhiran S/o Secnuvasan, Nelli hope, Sathipattu Post, Panruti Taluk, South Arcot Distt. (Tamil Nadu).	Account not lodged at all.
10.	-do-	-do-	M. Pragasam, S/o T. Munusamy, No. 17, Saravanapuram, Nellikuppam, South Arcot Distt. (Tamil Nadu).	-do-
11.	-do-	65-Kurinjipadi	M. Radha, S/o Muthu Naidu, Agaram, Kullanchavadi, Cuddalore, South Arcot Distt. (Tamil Nadu)	-do-
12.	-do-	-do-	R. Venkatachalam, S/o Ramanujam, Periyakurichi, Neyveli-2 South Arcot Distt. (Tamil Nadu).	-do-
13.	-do-	-do-	V. Jayakumar, S/o Vetharanyan, Cuddalore Main Road, Neyveli-2 South Arcot Distt. (Tamil Nadu)	-do-
14.	-do-	-do-	M.K.S. Rahiman Sait, S/o Syed Ravuthar, No. 5-B/276, Main Road, Neyveli-2 South Arcot Distt. (Tamil Nadu).	Account not lodged in the manner required by law.
15.	-do-	-do-	M.P. Thangavel, S/o Pethan C-11, Turban Road, Block No. 26, Neyveli-1 South Arcot Distt. (Tamil Nadu).	Account not lodged within the time and in the manner required by law.
16.	-do-	67-Kattumannarkoil (SC)	M. Kaliamoorthy, S/o Muthukannu, Omampuliyur & Post (via) Ayangudi, Kattumannarkoil Taluk South Arcot Distt. (Tamil Nadu).	Account not lodged at all.

1	2	3	4	5
17.	General Election to Tamil Nadu Legislative Assembly 1989	69-Vridhachalam	C. Arumugam, Periyavadyad Vijayam Nagaram Post, Vridhachalam-606104 South Arcot Distt., (Tamil Nadu).	Account not lodged at all
18.	-do-	-do-	R. Rajendran 4/79, Umangalam & Post Vridhachalam Taluk, 607804, South Arcot Distt, (Tamil Nadu).	-do-
19.	-do-	-do-	C. Chakrapani, 5. East Street, Uthangal Village and Post, Vridhachalam, Taluk, South Arcot Distt. (Tamil Nadu).	-do-
20.	-do-	-do-	P. Thirunavukkarasu, Komangalam, Manavalanallur Post, Vridhachalam Taluk, South Arcot Distt., (Tamil Nadu).	-do-
21.	-do-	70-Mangalore (SC)	Sellan, S/o Natarajan Cholan Nagar Pennadam, Tittagudi Taluk South Arcot Distt., (Tamil Nadu).	-do-
22.	-do-	-do-	Mookan, S/o Mottalan, Ambetkar Nager, Pennadam, Tittagudi Taluk, South Arcot Distt., (Tamil Nadu).	Account not lodged in the manner required by law.
23.	-do-	-do-	M. Jayaraman, S/o Mooppan, Paravlur and Post, Vridhachalam, Taluk, South Arcot Distt., (Tamil Nadu).	-do-
24.	-do-	71-Rishivandiyam	T. Abdul Wahab, S/o Thambu Sahib, 24-B, Lakkinaichkenpatti and Post, Kallakurichi Taluk, South Arcot Distt., (Tamil Nadu).	Account not lodged at all.
25.	-do-	73-Sunkarapuram	T. Abdul Wahab, S/o Thambu Sahib Lakki Naickenpatty Post Kallakurichi Taluk South Arcot Distt. (Tamil Nadu).	-do-

	1	2	3	4	5
26.	General Election to Tamil Nadu Legislative Assembly-1989.	126-Coonoor (SC)	A. Ammasan, 142, Gandhipuram, Coonoor, Nilgiris Distt., Udhagamandalam, (Tamil Nadu).		Account not lodged at all.
27.	-do-	-do-	K. Raju, Avaki Divion, Nonsuch Post, Hulical Village, Nilgiris Distt. Udhagamandalam (Tamil Nadu).		-do-
28.	-do-	207-Sivakasi	K. Athimoolam, S/o Karuppasami, Sengamalanachiarpuram Road, Thiruthangal, Sattur Taluk, Kamarajan District., (Tamil Nadu).		-do-

[No. 76/TN. LA/89 (1-28)]

By Order,
C.L. ROSE, Secy.

आदेश

नई दिल्ली, 7 फरवरी, 1991

आ.अ. 33—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट नवम्बर 1989 में हुए लोक सभा निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट तदनुस्रत संसदीय निर्वाचन क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अध्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदीन बनाए गये नियमों द्वारा अपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्ययों के लेखे दाखिल करने में असफल रहे हैं :

और उक्त अध्यर्थियों ने सम्यक सूचना दिये जाने पर भी उक्त असफलता के लिये न तो कोई कारण और न स्पष्टीकरण ही दिया है या उनके द्वारा दिये गये अध्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या व्यायोचित्य नहीं है;

अतः, अब, अनिर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को संभव के किसी भी सदन के या किसी राज्य/संघ राज्य क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिये आदेश की तारीख से तीन वर्ष की कालावधि के लिये निरहित घोषित करता है।

सारणी

क्रम संख्या	निर्वाचन का विवरण	संसदीय निर्वाचन क्षेत्र	अध्यर्थी का नाम और पता कोई क्र. सं. और नाम	निरहित का कारण
1	2	3	4	5
1.	लोक सभा के लिए साधारण निर्वाचन, 1989	1-बारामूला	1. श्री गुलाम अहमद तिलगामी तिलगाम (पाट्टन) जम्मू और काश्मीर।	अपने निर्वाचन व्यय का कोई भी लेखा दाखिल करने में असफल रहे।
2.	—वही—	—वही—	2. जानी सन्त सिंह उपलिमा (बारामूला) जम्मू और काश्मीर।	—वही—

[सं. 76/ज.क.-लो.स./1/91]

ORDER

New Delhi, the 7th February, 1991

O.N. 33.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the election to the House of People held in Nov., 1989, as specified in column (2) held from Parliamentary constituency correspondingly specified in column (3) against their names have failed to lodge account of their election expenses, as shown in column (5) of the said Table, as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that they have no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of election	S.No. & Name of Parliamentary Constituency	Name & Address of the Candidates	Reasons for disquali- fication
1	2	3	4	5
1.	General Election to the House of the People, 1989.	1-Baramulla	1. Sh. Gh. Ahmad Tilgami Tilgam (Pattan) Jammu & Kashmir.	Failed to lodge any account of his election exp.
2.	-do-	-do-	2. Giani Sant Singh Oplina (Baramulla) Jammu & Kashmir.	-do-

[No. 76/J&K-HP/91]

आ.ग्र. 34.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट हरियाणा राज्य लोक सभा के साधारण निर्वाचन के लिए जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उनके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तद्वान बनाये गये नियमों द्वारा प्रपेक्षित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्यवों का लेखा समय के अन्तर्गत और/अथवा अपेक्षित रीति से दाखिल करने में असफल रहा है।

और उक्त अभ्यर्थियों ने सम्यक मूचना दिये जाने पर भी उक्त असफलता के लिये या तो कोई कारण अथवा स्पष्टीकरण नहीं किया है या उनके द्वारा दिये गये अभ्यावेदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या त्यायोचित्य नहीं है।

अतः अब, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के प्रत्युत्तरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों का संसद के किसी भी सदन के या किसी राज्य/संघ राज्य-क्षेत्र की विधान सभा अथवा विधान परिषद के सदस्य चुने जाने और होने के लिए आदेश की तारीख से तीन वर्ष की कालावधि के लिये निरद्वित घोषित करता है।

सारणी

क्र.सं.	निर्वाचन का विवरण	मंसदीय/विधान मभा	निर्वाचन लष्णे वाले अश्यर्थी का नाम	निरहता का कारण
		निर्वाचन क्षेत्र की क्र.सं. और नाम	व पता	
1.	हरियाणा लोक मभा के लिये निर्वाचन,	6-फरीदाबाद संसदीय निर्वाचन क्षेत्र।	1. श्री जयपाल, रेलवे आसिंग, एन.आई.टी. फरीदाबाद।	लेखा विलकूल दाखिल नहीं किया।
2.	—वही—	—वही—	2. श्री राज सिंह, प्रतापगढ़ गौच्छी,	—वही—
3.	—वही—	—वही—	3. श्री प्रहलाद सिंह, म.नं. 175 पलबल	—वही—
4.	—वही—	—वही—	4. श्री दयाल, 874/23, फरीदाबाद	—वही—
5.	—वही—	—वही—	5. श्री फूल सिंह, बाई नं. 4, नूह जिला गुजरांवा।	—वही—
6.	—वही—	—वही—	6. श्री भनीराम शर्मा, खाम्बी, पलबल।	—वही—
7.	—वही—	4.—सोनीपत संसदीय निर्वाचन क्षेत्र	7. श्री हीरा लाल, ग्राम बड़ा थाना कला सोनीपत।	लेखा रीतिनुसार दाखिल नहीं किया।

[मंज्या : 76/हरि.-लो.स./90]

O.N. 34.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the General election to the Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said Table as required by the Representation of the People Act, 1951 and the Rules made thereunder;

And, whereas, the said candidates have either not furnished any reason or explanation for the said failure even after due notice or the Election Commission, after considering the representations made by them, if any, is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the persons specified in column (4) of the Table below to be disqualified for being chosen as and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/U.T. for a period of 3 years from the date of this order.

TABLE

S. No.	Particulars of election	S.No. and Name of Constituency	Name & Address of the candidate	Reason disqualification
1	2	3	4	5
1.	Election to the House of the People, Haryana, 1989.	6-Faridabad Parliamentary Constituency	1. Sh. Jaipal Singh, Railway Crossing NIT, Faridabad.	Account no lodged at all
2.	-do-	-do-	2. Sh. Raj Singh, Pratap Garh, Gauchchii.	-do-

1	2	3	4	5
3.	Electioon to the House of the People Haryana 1689	-do-	3. Sh. Prehlad Singh, House No. 175, Palwal.	Account not lodged at all
4.	-do-	-do-	4. Sh. Dayala, 874/23, Faridabad.	-do-
5.	-do-	-do-	5. Sh. Phool Singh, Ward No. 4, Nuh, Gurgaon.	do
6.	-do-	-do-	6. Sh. Mani Ram Sharma, Vill. Khambi, Palwal.	-do-
7.	-do-	4-Sonepat Parliamentary Constituency	7. Sh. Hira Lal, Vill. & P.O. Thana Kalan, Sonepat.	Account not lodged in manner

[No. 76/HN-HP/90]

आ. अ. 35.—निर्वाचन आयोग का समाधान हो गया है कि नीचे की सारणी के स्तम्भ (2) में यथा विनिर्दिष्ट विधान सभा के सामाधारण निर्वाचन के लिये जो स्तम्भ (3) में विनिर्दिष्ट निर्वाचन-क्षेत्र से हुआ है, स्तम्भ (4) में उसके सामने विनिर्दिष्ट निर्वाचन लड़ने वाला प्रत्येक अभ्यर्थी, लोक प्रतिनिधित्व अधिनियम, 1951 तथा तज्जीन बनाय गये नियमों द्वारा शोधित उक्त सारणी के स्तम्भ (5) में यथा दर्शित अपने निर्वाचन व्यक्तियों का लेखा दाखिल करने में असफल रहा है,

और उक्त अभ्यार्थियों ने सम्पूर्ण सूचना दिये जाने पर भी उक्त असफलता के लिये न तो कोई कारण न स्पष्टीकरण ही दिया है या उनके द्वारा दिये गये अभ्यावदनों पर, यदि कोई हो, विचार करने के पश्चात् निर्वाचन आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिये कोई पर्याप्त कारण या न्यायोचित नहीं है;

अतः शब्द, निर्वाचन आयोग उक्त अधिनियम की धारा 10-के अनुसरण में नीचे की सारणी के स्तम्भ (4) में विनिर्दिष्ट व्यक्तियों को सदन के किसी भी या किसी राज्य संघ राज्य-क्षेत्र की विधान सभा अथवा परिषद के सदस्य चुने जाने और होने के लिये आदेश की तारीख में तीन वर्ष की कालावधि के लिये निर्रहित घोषित करता है।

सारणी

क्रम सं.	निर्वाचन का विवरण	विधान सभा निर्वाचन क्षेत्र की क्र. सं. और नाम	निर्वाचन लड़ने वाले अभ्यर्थी का नाम और पता	निर्रहित का कारण
1	2	3	4	5
9.	विधान सभा के लिये सामाधारण निर्वाचन, 1990 गुजरात राज्य	149—राश्रोपुरा	श्री रमेश अनन्द गिरधारी लाल सोनी, राश्रोपुरा धीकांता रोड, वालाजी ¹ मन्दिर के सामने, बड़ोधरा, गुजरात	निर्वाचन व्यय का लेखा दाखिल करने में असफल रहा।
10.	—वही—	151—बड़ौदा खेतात	श्री तपोधन प्रबोध हीराभाई, ¹ सर्वोदय भवन के सामने, बनकारवास, ¹ डाक कोयाली, तह. और जिला बड़ौदा, गुजरात।	—वही—

1	2	3	4	5
11.	विधान सभा के लिय साधारण निर्वाचन, 1990 गुजरात राज्य	151-बड़ीदा देहात	श्री पटल रमणभाई रावजीभाई डाक, सेवासी, तह, और जिला बड़ीदा, पि. को.-391101 गुजरात	निर्वाचन व्यय का लेखा दाखिल करने में असफल रहे।
12.	—वही—	—वही—	श्री रोहित केशवभाई कलाभाई, डाक शोरखी, तह, और जिला बड़ीदा, गुजरात।	—वही—
13.	—वही—	148-सायाजीगंज	श्री पटल बायाराव रामदास, सरस्वती नगर नवायाड़, बडोधरा, गुजरात।	—वही—
14.	—वही—	—वही—	श्री भद्रासिंह बी-थक्कड़ सुकल नगर, मेथोडिस्ट टैक्नीकल स्कूल, सभा रोड, बडोधरा, गुजरात।	—वही—
15.	—वही—	—वही—	श्री भरतभाई रमणलाल पाठक, रावपुरा, बडोधरा बड़ी बाली, बलियागिर मन्दिर के सामने, बडोधरा, गुजरात।	—वही—
16.	—वही—	—वही—	श्री भूपेन्द्र बी. शर्मा, 99, अक्षर धाम सोसायटी, हरनी रोड, बडोधरा, गुजरात।	—वही—
17.	—वही—	—वही—	श्री एलिम भोहम्मद हुसैन एल. पठान यकृतपुरा, चुड़ीवाला लेन, बडोधरा, गुजरात।	—वही—
18.	—वही—	145-वभोई	श्री जोशी हितन्द्र बंसीलाल, डाकघर जनजाद, तह. सिन्हर, जिला बडोधरा, गुजरात।	—वही—
19.	—वही—	—वही—	श्री तोल्लावाला राजाक इद्राहिमभाई कडोवाह कनाभाई शोरी, वभोई, गुजरात।	—वही—
20.	—वही—	—वही—	श्री पटेल महेशभाई मनुभाई डाकघर नारायणदास भाग कयावरोहन तह. वभोई गुजरात।	—वही—
21.	—वही—	—वही—	श्री पटेल मंगलभाई शानभाई याकबर सितपुर तह. वभोई गुजरात।	—वही—
22.	—वही—	—वही—	श्रीमती रुक्मणिदेवी गोहिल विजय पैलेस राजपिपला तह. नदोड, जिला भडोच, गुजरात।	—वही—

1	2	3	4	5
23.	विधान सभा के लिए साधारण निर्वाचन, 1990 गुजरात राज्य	145-दभोई	श्री बसबा मननभाई लाल्लभाई, थम सदन, भवन, राओपुरा, बडोधरा, गुजरात।	निर्वाचन ध्यय का लेखा दाखिल करने में असफल रहे।
24.	--वही--	--वही--	श्री शाह रिकेशभाई मधुभाई, बडोधरा भागल, बद्रीनारायण मन्दिर के सामने, दभोई, गुजरात।	--वही--
25.	--वही--	147-बड़ोश शहर	श्री चौहान खोदाभाई लल्लभाई शिवशक्ति चौक, एन.एस. 206 जी एच, जबाहर नगर के सामने, किसानवाडी, बडोधरा, गुजरात	--वही--
26.	--वही--	--वही--	श्री जमींदार रणजीत सिंह अर्जुनसिंह, जय गुरुदेव बाम, महादेव नगर सोसायटी के सामने, पानीगेट के बाहर, बडोधरा, गुजरात।	--वही--
27.	--वही--	--वही--	श्री पारेख रसिकलाल कासीवास (बापजी) मंगल बाजार, बजवाडा, धेला पारेखनी हवेली, बडोधरा, गुजरात।	--वही--
28.	--वही--	--वही--	श्री बन्सीलाल छोटालाल महेता, 134, विजयनगर, गुजरात हाऊसिंग वोर्ड, गोरवा, बडोधरा, गुजरात।	--वही--
29.	--वही--	150-वाधोदिया	श्री पटेल जेठाभाई जेसेंगमाई, डाकघर साईदल, तह. वाधोदिया, गुजरात।	--वही--
30.	--वही--	--वही--	श्री परमार लक्ष्मणभाई, कांजीभाई, मुवाडा, आकघर घोदाद्रा, तह. वधोदिया, गुजरात।	--वही--
31.	--वही--	--वही--	श्री परमार हिमतसिंह उदयसिंह (वकील), पंचदेवला, डाकघर लिलेसा, जिला बड़ोदा, गुजरात	--वही--
32.	--वही--	152-पड़ा	श्री गांधी दिनेशचन्द्र रमणलाल, शिरोला, तह. दभोई, गुजरात।	--वही--
33.	--वही--	--वही--	श्री पटेल शांतिलाल भीबाभाई सुरस्वती, तह. पड़ा, गुजरात।	--वही--
34.	--वही--	--वही--	श्री वधेला रायसिंह शिवसिंह, गोरीयाड़, तह-पड़ा, गुजरात।	--वही--
35.	--वही--	175-गन्देवी	श्री पटेल चन्दुभाई सुखाभाई, गणदेवी घोष, डाकघर वाधरीय, वावा बिल्लीमोरा, तह. गन्देवी, गुजरात।	--वही--
36.	--वही--	--वही--	पटेल रमेशभाई सोमाभाई तलोध, रामजी मन्दिर के सामने बिल्लीमोरा, तह. गन्देवी गुजरात।	--वही--

O.N. 35.—Whereas the Election Commission is satisfied that each of the contesting candidates specified in column (4) of the Table below at the General Election to the Legislative Assembly as specified in column (2) and held from the constituency specified in column (3) against his name has failed to lodge any account of his election expenses as shown in column (5) of the said Table as required by the Representation of the People Act, 1951, and the Rules made thereunder;

And, whereas, the said candidate has either not furnished any reason or explanation for the said failure even after due notice of the Election Commission, after considering the representation made by him if any, is satisfied that he has no good reason or justification for the said failure;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares the person specified in column (4) of the Table below to be disqualified for being chosen as, and for being a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State/Union Territory for a period of 3 years from the date of this order.

TABLE

Sl. No.	Particulars of Election	S. No. & Name of the assembly constituency	Name & Address of the contesting candidate	Reason for Disqualification
1	2	3	4	5
9.	General Election to the Legislative Assembly, 1990-Gujarat State.	149-Raopura	Sh. Ramesh Chandra Girdharilal Soni, Raopura, Gheekanta Road, Opp. Balaji Mandir, Vadodara, Gujarat.	Failed to lodge any account of election expenses.
10.	-do-	151-Baroda Rural	Sh. Tapodhan Pravin Hirabhai, Near Sarvodaya Building, Vankarvas, At & Post : Koyali, Ta. & Distt. Baroda, Gujarat.	-do-
11.	-do-	151-Baroda Rural	Sh. Patel Ramanbhai Ravjibhai, At. & Post : Sevasi, Ta. & Distt. Baroda, P.C. 391101 Gujarat.	-do-
12.	-do-	-do-	Sh. Rohit Keshavbhai Kalabhai, At. & Post : Sherkhi, Ta. & Distt. Baroda, Gujarat.	-do-
13.	-do-	148-Sayajiganj	Sh. Patel Baparao Ramdas, Saraswati Nagar Nava Yard, Vadodara, Gujarat.	-do-
14.	-do-	-do-	Sh. Bhadrasing B. Thakkar, Sukal Nagar, Opp. Methodist Technical School, Sama Road, Vadodara, Gujarat.	-do-

1	2	3	4	5
15.	General Election to the Legislative Assembly, 1990- Gujarat State.	143 Sayajiganj	Sh. Bharatbhai Rainanlal Pathak, Raopura, Vadi Wadi, Near Balyader Temple, Vadodara, Gujarat.	Failed to lodge any account of election expenses.
16.	-do-	-do-	Sh. Bhupendra B. Sharma, 99, Akshar Dham Society, Harni Road, Vadodara, Gujarat.	-do-
17.	-do-	-do-	Sh. Alias Mohammad Husen L. Pathan, Yakutpura, Chudiwala Lane, Vadodara, Gujarat.	-do-
18.	-do-	145 Dabhoi	Sh. Joshi Hitendry Bansilal, At. & P.O. Zanzad, Ta. Sinahar, Distt. Vadodara, Gujarat.	-do-
19.	-do-	-do-	Sh. Tollawala Razak Ibrahimhai, Kadiwad Kanabhai's Shery, Dabhoi, Gujarat.	-do-
20.	-do-	-do-	Sh. Patel Maheshbhai Manubhai, At. & P.O. Narayandas's Bhag Kayavarohan, Ta. Dabhoi, Gujarat.	-do-
21.	-do-	-do-	Sh. Patel Mangalbhai Shanabhai, At. & P.O. Sitapur, Ta. Dabhoi, Gujarat.	-do-
22.	-do-	-do-	Smt. Rukmani Devi Gohil, Vijay Palace Rajpipla, Ta. Nadod, Distt. Broach, Gujarat.	-do-
23.	-do-	-do-	Sh. Vasava Maganbhai Lallubhai, Shram Sadhna Building Raopura, Vadodara, Gujarat.	-do-
24.	-do-	-do-	Sh. Shah Rikeshbhai Madhubhai, Vadodari Bhagal Near Badrinarayan Temple, Dobhoi, Gujarat.	-do-

1	2	3	4	
25.	General Election to the legislative Assembly, 1990 Gujarat State	147-Baroda City	Sh. Chauhan Khodabhai Lallubhai, Shivshakti Chowk, N.S. 206 GH, Opp. Zawarnagar, Kisanwadi, Vadodara, Gujarat.	Failed to lodge any account of election expenses
26.	-do-	-do-	Sh. Jamindar Ranjitsing Arjun singh, Jay Gurudev Was, Near Mahadev Nagar, Society, Outside Panigate, Vadodara, Gujarat.	-do-
27.	-do-	-do-	Sh. Parekh Rasiklal Kalidas (Bapji), Mangal Bazar, Bajwada, Ghela, Parekhni Haveli, Vadodra, Gujarat.	-do-
28.	-do-	-do-	Sh. Bansilal Chhotalal Mehta, 134, Vijaynagar, Gujarat Housing Board, Gorwa, Vadodara, Gujarat.	-do-
29.	-do-	150-Waghodia	Sh. Patel Jethabhai Jesangbhai, At. & P.O. Saidal, Tal. Waghodia, Gujarat.	-do-
30.	-do-	-do-	Sh. Parmar Laxmanbhai Kanjibhai, At. Muvada, P O. Ghodadara, Tal. Waghodia, Gujarat.	-do-
31.	-do-	-do-	Sh. Parmar Himatsingh Udaysingh (Vakil) At. Panch Devla, P.O. Lilosha, Distt. Baroda. Gujarat.	-do-
32.	-do-	152-Padra	Sh. Gandhi Dineshchandra Ramanlal, At. Shirola, Tal. Dabhoi, Gujarat.	-do-
33.	-do-	-do-	Sh. Patel Shantilal Bhikhabhai, At. Sursavni, Ta. Padra, Gujarat.	-do-

1	2	3	5
34.	General Election to the Legislative Assembly, 1990 Gujarat State	152-Padra Sh. Vaghela Raysinh Shivsinh, Goriyad, Ta. Padra, Gujarat.	Failed to lodge any account of election expenses
35.	-do-	175-Gandevi Sh. Patel Chandubhai Sukhabhai, At. Gandevi Ghol, P O. Vaghrech, Via. Billimora, Tal. Gandevi, Gujarat.	-do-
36.	-do-	-do- Sh. Patel Rameshbhai Somabhai, At. Talodh, Opp. Ramji Mandir, Billimora, Tal. Gandevi, Gujarat.	-do-

[No. 76/Gj/90 (9.36)(LA)]

By Order,
GHANSHYAM KHOHAR, Under Secy.

आदेश

नई दिल्ली, 7 फरवरी, 1991

आ.अ. 36 :—निर्वाचित आयोग का समाधान हो गया है कि 12-पाक्के-केसंग (अ.ज.जा.) विधान सभा निवाचित-क्षेत्र से अरुणाचल प्रदेश विधान सभा के लिए साधारण निर्वाचित लड़ने वाले उम्मीदवार श्री लागू तायेम, गांव डारलोंग, पो. आ. सीजोसा, पूर्व कामेंग जिला, अरुणाचल प्रदेश के लोक प्रतिनिधित्व अधिनियम, 1951 तथा तदीन बनाए गए नियमों द्वारा अपने निर्वाचित व्ययों का लेखा दाखिल करने में असफल रहा है।

और, श्री लागू तायेम ने सम्मक सूचना दिए जाने पर भी उक्त असफलता के लिए कोई कारण या स्पष्टीकरण नहीं दिया है और निर्वाचित आयोग का यह समाधान हो गया है कि उनके पास उक्त असफलता के लिए कोई पर्याप्त कारण या न्यायोचित नहीं है।

अतः, प्रब्र, निर्वाचित आयोग, उक्त अधिनियम की धारा 10-क के अनुसरण में श्री लागू तायेम को संसद के किसी भी सदन के या किसी राज्य की विधान सभा अथवा विधान परिषद् के सदस्य चुने जाने और होने के लिए आवेदन की तारीख से तीन वर्ष की कालावधि के लिए निर्गति घोषित करता है।

[सं. 76/अरुण/91]

आदेश से,
एस. डी. प्रमाद, सचिव

ORDER

New Delhi, the 7th February, 1991

O.N. 36.—Whereas the Election Commission is satisfied that Shri Lagu Tayem Village-Darlong, P.O. Seijosa, East Kameng district, Arunachal Pradesh Legislative Assembly from 12-Pakke-Kessang (ST) Assembly Constituency has failed to lodge an account of his election expenses as required by the Representation of the People Act, 1951 and the rules made thereunder :

And, whereas, Shri Lagu Tayem has not furnished any reason or explanation for the said failure even after due notice and the Election Commission is satisfied that he has no good reason or justification for the said failure ;

Now, therefore, in pursuance of section 10A of the said Act, the Election Commission hereby declares Shri Lagu Tayem to be disqualified for being chosen as, and for being, a member of either House of the Parliament or of the Legislative Assembly or Legislative Council of a State for a period of 3 years from the date of this order.

[No. 76/ARUN/91]

By Order,
S. D. PERSHAD, Secy.

नई दिल्ली, 14 फरवरी, 1991

आ.अ. 37 :—निर्वाचित आयोग 1990 की निर्वाचित अर्जी सं. 1 में गुवाहाटी उच्च न्यायालय, अग्ररतला वैध के तारीख 1-11-1990 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 (1951 का 43) की धारा 106 के अनुसरण में, इसके बाग प्रकाशित करता है।

[सं. 82/त्रिपुरा-सो.स./1/90(91)]

आदेश से,
बी.एन. चावला, अवर सचिव

New Delhi, the 14th February, 1991

O.N. 37.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgment dated 1-11-90 of the Gauhati High Court, Agartala Bench in Election Petition No. 1 of 1990.

[No. 82/TP-HP/1/90(91)]

By Order,

B. N. CHAWLA, Under Secy.

IN THE GAUHATI HIGH COURT

(The High Court of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram and Arunachal Pradesh)

(AGARTALA BENCH)

Election Petition No. 1 of 1990

Shri Manik Sarkar—Petitioner.

Versus

Shri Santosh Mohan Dev & Ors... Respondents.

PRESENT :

Honble Mr. Justice Manisana.

For the Petitioner—Mr. S. Deb, Mr. A. Chakraborty, Sr. Advocates, Mr. R. Ghosh, Mr. P. K. Paul, Mr. T. D. Majumder, Advocates.

For the Respondents (petitioners in the petition under O 6 R 16. CPC)—Mr. J. P. Bhattacharjee, Mr. S. Barman Roy, Sr. Advocate, Mr. B. B. Deb, Mr. M. K. Bhowmik, Mr. S. Bhattacharjee, Advocates.

Date of hearing : 20-8-90 and 21-8-90.

Date of judgment : 1 Nov., 1990.

JUDGMENT

In this petition, the petitioner Mani Sarkar has challenged the election of the returned candidate Santosh Mohan Deb (respondent-1) from 1-West Tripura Parliamentary Constituency in the State of Tripura at which the returned candidate (respondent-1), the petitioner and 5 others were contesting the election. The petitioner was set up by CPI(M), the returned candidate was set up by Congress (I), the respondent-6 was sponsored by BJP, the respondent-5 was set up by Amara Bangali and Others were independent candidates. On 23-10-89 the President of India issued notification calling upon the constituencies of the House of People of the Union of India to elect members. The last date of submitting nomination papers was 13-10-89 and the date of poll was 22-11-89 and the hours of poll was from 7.00 AM to 4 PM. The result was declared on 27-11-89. The total number of valid votes polled was 6,74,119. Of these, the returned candidate (respondent-1) received 4,10,904 as against the next candidate (the petitioner) who has received 2,44,749. There was thus a majority of 1,66,155 votes in favour of the returned candidate.

2. The main grounds of attack are that the corrupt practices were committed by the agents and/or workers of the respondent-1 the returned candidate, with the consent of and at the instance of the respondent-1 and/or his election agent.

3. The returned candidate (respondent-1) filed an application for striking out the pleadings and/or for rejection of the election petition on the ground that the allegations in the election petition are vague and do not disclose cause of action.

4. It is settled that a combined reading of sections 81, 83, 86 and 87 of the Representation of the People Act, 1951, for short 'the Act' those paragraphs of the election petition which do not disclose any cause of action are liable

to be struck out under O 6, r 16, CPC as the Court is empowered at any stage of the proceedings to strike out or delete pleadings which is unnecessary, scandalous frivolous or vexatious, or which may tend to prejudice, embarrass or delay the fair trial of the petition, or which is otherwise the abuse of the process of the Court. If the petition as a whole does not disclose any cause of action, the petition is also liable to be rejected under O 7, r 11, CPC.

5. The Act is a complete and self-contained Code. Under the Act an election can be questioned on the ground contained in section 100 of the Act. Section 81(1)(a) of the Act provides that an election petition shall contain a concise statement of the material facts, and section 81(1)(b) of the Act provides that the petition shall set forth full particulars of any corrupt practices that the petitioner alleges. The pleadings are regulated by section 83 of the Act and it makes obligatory on the election petitioner to give the requisite facts, details and the particulars of such corrupt practice with full statement with exactness as possible. The provision of section 83 are mandatory. Therefore, if the material facts constituting cause of action or corrupt practices are not averred, then no ground is made out for challenging the election petition and election petition can be rejected under O 7, r 11, CPC.

6. Before dealing with the contentions of the learned counsel for the parties, I consider it necessary to state the settled position of law with regard to "material facts and particulars".

(1) Material facts are facts which is established would give the petitioner the relief asked for. The test required to be answered is whether the Court can give a direct verdict in favour of the election petitioner on the basis of the facts pleaded in the petition in case the returned candidate has not appeared to oppose the election petition [See Manubhai Nandalal Amarsey Vs. Popatal Manilal Joshi, (1969)3 SCR 217 : AIR 1969 SC 734]. The material facts are those facts necessary to formulate a complete cause of action. Omission of a single material fact leads to an incomplete cause of action and the statement of claim becomes bad (see Samant Vs. George Fernandez, AIR 1969 SC 1201).

(2) The function of particulars is to present as full a picture of the cause of action with such further information in detail as to make the opposite party understand the case he will have to meet. There may be some overlapping between material facts and particulars but the two are quite distinct. The material facts will show the ground of corrupt practice and the complete cause of action and the particulars will give the necessary information to present a full picture of the cause of action. Merely repeating the words of the statute does not amount to a proper statement of facts and particulars of corrupt practices i.e. a petition which merely cites section cannot be said to disclose a cause of action (see AIR 1969 SC 1201. Samant Vs. George Fernandez). Particulars are the details of the case set up by the parties. "Particulars" within the contemplation of clause (b) of section 83(1) are all details which are necessary to amplify, refine and embellish the material facts already pleaded in the petition in compliance with the requirements of clause (a) of section 83(1).

(See Udhov Singh Vs. Madhav Rao, AIR 1976 SC 744).

(3) There must also be a statement in the election petition describing the manner in which the prospects of the election was further the way in which assistance was rendered (see Hardwarilal Vs. Kanwal Singh AIR 1972 SC 515).

(2)(a) With regard to the consent of the returned candidate or his election agent, there must be averment in the petition facts showing that it was with the consent of the returned candidate or his election

agents, i.e. facts showing how it was said that it was with the consent of the returned candidate or his election agent must be pleaded, for example, whom the returned candidate gave consent, how and in what manner consent was given and when and in whose presence the consent was given.

(b) Names of the agents and workers, time, dates and place should be stated in the petition.

(c) Allegation should not be vague.

(See Azhar Hussam Vs. Rajiv Gandhi, AIR 1986 SC 1253).

7. As regards the grounds for declaring an election to be void, section 81 of the Act provides that an election petition calling in question any election may be presented on one or more grounds specified in sub-section (1) section 100 and section 101 of the Act. Section 101 is not relevant in the present case. The relevant portion of Sub-section (1) of Section 100 are as follows—

"Subject to the provisions of sub-section (2) if the High Court is of the opinion—

(a) ***

(b) that any corrupt practice has been committed by a returned candidate or his election agent or by any other person with the consent of a returned candidate or his election agent ; or

(c) ***

(d) that the result of the election in so far as it concerns a returned candidate, has been materially affected—

(i) ***

(ii) by any corrupt practice committed in the interest of the returned candidate by an agent other than his election agent, or

(iii) ***

(iv) ***

the High Court shall declare the election of the returned candidate to be void."

Corrupt practice is defined in section 123 of the Act. There are many kinds of corrupt practices. The relevant corrupt practices under section 123 for the present case are as follows—

"(1) The following shall be deemed to be corrupt practices for the purpose of this Act.

(i) ***

(2) Under influence, that is to say, any direct or indirect interference or attempt to interfere on the part of the candidate or his agent, or of any other person with the consent of the candidate or his election agent, with the free exercise of any electoral right :

Provided that—

(a) without prejudice to the generality of the provisions of this clause any such person as is referred to therein who—

(i) threatens any candidate or any elector or any person in whom a candidate or an elector is interested, with injury or any kind including social ostracism and ex-communication or exploitation from any caste or community ; or

(ii) ***

shall be deemed to interfere with the electoral right of such candidate or elector within the meaning of this clause ;

(3) ***

8. Booth capturing by a candidate or his agent or other person.

Explanation.—(1) In this section the expression 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the consent of the candidate.

*** *** ***

(4) For the purpose of clause (8), booth capturing shall have the same meaning as in section 135-A."

By sub-section (2) of section 99 of the Act, the definition of the expression 'agent' given under the explanation to section 123 has been made applicable to section 100. Therefore, for the purpose of corrupt practice, the word 'agent' includes an election agent, a polling agent and any person who is held to have acted as an agent in connection with the election with the consent of the candidate. As regards the election agent and the polling agent, their appointments are provided by sections 40 and 46 of the Act respectively. In respect of any other person, he cannot be said to be an agent unless he is held to have acted as an agent with the consent of the candidate only in connection with the election.

A reading of section 123 together with sub-section (1) of section 100 of the Act indicates that the corrupt practice can be committed by—

(a) the candidate ;

(b) his agent, that is to say—

(i) an election agent,

(ii) a polling agent,

(iii) any person who is held to have acted as an agent in connection with the election with the consent of the candidate ; or

(c) by any other person with the consent of the candidate or his election agent.

Under section 100(1)(b) of the Act, if the corrupt practice is committed by a returned candidate or an election agent, the election is void without any further condition being fulfilled. But, if the corrupt practice is committed by any other person other than the candidate or his election agent, it must be shown that it was committed by him with the consent of the candidate or his election agent. Under section 100(1)(d)(ii), if the corrupt practice is committed in the interest of the returned candidate by an agent, other than his election agent, it is further to be shown that the result of the election, in so far as it concerns the returned candidate, has been materially affected. The agent here means the polling agent or any other person who is held to have acted in connection with the election with the consent of the candidate. A combined reading of clauses (b) and (d)(ii) of sub-section (1) of Section 100 shows that there may be a corrupt practice committed by an agent with or without consent of the candidate or his election agent. If it is with the consent of the candidate or his election agent it will fall within the purview of sub-section (1)(b) of section 100 as the expression 'any other person' under section 100(1)(b) will include an agent other than election agent; otherwise it will be within the ambit of sub-section (1)(d)(ii).

8. Keeping the above principles in view, let me examine the case on hand. The election petition runs into 40 paras. Averments made in paragraphs 1 to 5 are the preliminary statements relating to the notification issued by the President of India calling upon to elect the members of the Parliament, as already stated. In paragraphs 6 and 7 it is stated that those facts stated therein are backgrounds how the election had been held in the constituency in question. The statements relate to the allegation about large scale violence etc. in that constituency. Statements in paras 24 to 40 are formal in nature and submissions of the petitioner.

9. Paragraph 8 of the election petition contains seven (7) separate sections or clauses. As regards the allegations made in paragraph 8, the first part of it, before the subdivisions of the clauses, relates to general statement about the alleged corrupt practices committed by the workers of

the respondent-1 and his agents (other than election agent) with the consent of the respondent-1 and his election agent by using violence in the matter of hanging posters, festoons, wall writings, etc. The particulars of those alleged corrupt practices are given in the clauses.

The allegations made in each of the clauses are almost all of the same nature in the same form or pattern and are of corrupt practices committed by the Congress (I) workers including the leaders. The alleged corrupt practices are : (1) washing out wall writings and posters, and destroying many hanging banners of CPI (M); (2) destroying flags festoons and gates of CPI (M); taking over flags and festoons of CPI (M), and (4) tearing down flags and festoons of CPI (M). The corrupt practices were committed on 1-11-89, 3-11-89, 9-11-89, 13-11-89, 14-11-89, 15-11-89 and 16-11-89.

The names of the workers including the leaders and the number of the workers (not named), time, date and place where it was committed are stated in all the clauses except in clauses (i) and (ii) wherein hour (time) has not been stated.

At the end of the each of the clause, it is stated that the corrupt practices were committed by the Congress (I) workers with the consent and at the instance of the respondent-1 and his election agent for furtherance of the prospect of the election of the respondent-1 and materially affecting the result of the election against the petitioner, except in clauses (i) and (ii) wherein the expression 'at the instance' is not stated. In the last part of para 8 after the clauses, it is alleged that corrupt practices stated in clauses or sub-paras were committed by the agents of the respondent-1 with the consent and at the instance of the respondent-1 and his election agent. The relevant documents, viz. FIRs and communications made by the workers of the petitioner to several authorities would be produced at the appropriate time. All the corrupt practices were committed with the consent of the respondent-1 for intimidating the electors so that they would not come to cast their votes in favour of the petitioner. It was what actually happened and as a result of which the result of the election so far as the petitioner is concerned was materially affected because, in the absence of the genuine electors, the men of the respondent-1 captured the polling station and whatever they pleased.

10. It appears that the alleged corrupt practices alleged in clause (i) were committed by the Congress (I) workers with the consent of the returned candidate and his election agent, and the corrupt practices alleged in other clauses were committed at the instance and with the consent of the returned candidate and his election agent by the Congress (I) workers. But in the last part of para-8 after the clauses, it has been stated that the corrupt practices were committed by the agents of the returned candidate with the consent and at the instance of the respondent-1 and his election agent. It has been stated that the corrupt practices were committed with the consent of the respondent-1 for intimidation of the electors, as stated above.

11. The date of poll was 22-11-89 from 7.00 AM to 4.00 PM. The alleged corrupt practices were committed at least a week before 22-11-89. The time (hour) of commission of the corrupt practices have not been given so far as it relates to clauses (i) and (ii). It has been stated that the corrupt practices have affected the result of the election against the petitioner, and not of the returned candidate. It has not been averred in para 8 of the petition how the destroying of posters, festoons, etc. alleged in the petition amounted to corrupt practices and in whose presence it was done, and how the prospect of the election of the returned candidate was furthered or the manner in which the prospect of the election of the returned candidate was furthered. The petition does not describe as to how the result of the election in so far as it concerned to the petitioner, has been materially affected, as stated in the petition. Even assuming that the allegations made in para 8 amounted to corrupt practices, the allegations are vague and the petition is also lacking in material facts and particulars for the following reasons.

In the petition the word 'agent' has been used. For the purpose of corrupt practice, the word 'agent' has its own meaning. As already stated, the word 'agent' is defined under section 123 of the Act. It has been concluded that the corrupt practices can be committed by (a) the candidate; (b) his agent, that is to say—(i) an election agent, (ii) a polling agent, and (iii) any person who is held to have acted as an agent in connection with the election with the consent of the candidate; or (c) by any person with the consent of the candidate or his election agent. In the petition, it is not stated which of the agents, other than the election agent, committed the corrupt practices. If the corrupt practices were committed by an agent, other than the election agent and the polling agent, it must be stated in the petition the facts showing for holding or saying that the person has acted as an agent in connection with the election with the consent of the candidate, or how it was said that he was an agent. The use of the statutory word 'agent' is not sufficient. A mere volunteer or worker even though acting for returned candidate's benefit or interest in connection with an election is not his agent. No fact has been stated in the petition how those persons or workers could be held to have acted as agents in connection with the election with consent of the candidate and, therefore, it is not known how those workers and/or persons were agents of the returned candidate. Mere statement that the agents of the returned candidate committed the corrupt practices does not make a complete cause of action. It will be mere repetition of the statutory word 'agent' and cannot be said to disclose a cause of action. It is not also stated in the petition that when the election agent or the polling agent was appointed in order to show that, on the relevant dates, if there was an election agent or any polling agent. In the absence of the pleadings, it cannot be said that the material facts and particulars as provided under section 83 of the Act have been set forth. It also appears that the petitioner does not know whether the alleged corrupt practices were committed by the polling agent, or any person who can be said to be an agent within the meaning of explanation to section 123, or by both. In Nihal Singh V. Rao Birendra Singh, (1970)3 SCC 232, it has been observed by the Supreme Court :

"..... The pleading was so vague that it left a wide scope to the appellant to adduce evidence in respect of a meeting at any place on any date that he found convenient or for which he could procure witnesses. The pleading, in fact, was so vague and was wanting in essential particulars that no evidence should have been permitted by the High Court on this point...."

In Azhar Hussain Vs. Rajiv Gandhi, AIR 1986 SC 1253, the Supreme Court relying on the decision in Nihal Singh (Supra) has held that no amount of evidence could cure the basic defect in the pleading and the pleading as it stands must be construed as to whether it discloses cause of action or not.

In clauses (iii) to (vi), it is stated that the corrupt practices were committed by the Congress (I) workers with the consent and at the instance of the returned candidate and his election agent. In Clauses (i) and (ii), it is stated that the corrupt practices were committed with the consent of the returned candidate and his election agent. In the beginning of the para, it is stated : "with consent of the respondent-1". There is distinction between the expressions "with the consent" and "at the instance". Be that as it may, it appears that the petitioner does not himself know whether it was with the consent and at the instance of the returned candidate, or his election agent, or both. That apart, as regards the consent of the returned candidate and/or his election agent, facts which should have been stated showing whom the returned candidate or his election agent gave consent, how and in what manner the consent was given, and when and in whose presence consent was given, are not stated in the pleading of the petitioner. In other words, facts showing as to how it was said that the consent of the returned candidate and/or his election agent, have not been pleaded. The pleading is so vague that it left a wide scope to the petitioner to lead evidence at his convenience which is not permissible as laid down by the Supreme Court in the above cited cases.

The allegations made in clauses (i) and (ii) can be struck out also on the simple ground that the time (hour) of the commission of the corrupt practices has not been stated in order to enable the respondent-1 to meet the allegations.

The election petitioner did not produce the documents mentioned in last part of the para, although it is stated that they would produce at appropriate time, nor did he seek to produce the same or their copies. The fact remains that without production of these documents the cause of action would be incomplete.

In view of the above discussions, even if the returned candidate does not appear to oppose the petition, a direct verdict cannot be given in favour of the petitioner on the basis of the facts pleaded for want of material facts and particulars. Therefore, there is no cause of action, and as such the para 8 is to be struck out.

12. With reference to paragraph 9 of the election petition, in the first part of it before the sub-divisions of clauses, it is stated therein that during the election campaign period, a large number of workers, members, supporters of Congress (I) with the consent and at the instance of respondent-1 and his election agent committed several criminal offences, namely criminal intimidation, mischief by fire and demolition of house of the supporters and members of CPI (M), and party office or CPI (M) which amounted to corrupt practices for intimidating the electors, so that they could not come out to cast their votes in favour of the petitioner. It was actually happened and it has materially affected the result of the election against the petitioner because, in the absence of the genuine electors, the men of the respondent-1 captured the polling stations and did whatever they pleased on the date of poll. The alleged corrupt practices are set out in the clauses.

The allegations made in all the clauses are almost of the same nature and in the same form or pattern. The alleged corrupt practices stated in each of the clauses, in brief, are as follows :

Clause (i).—On 13-11-89 at about 12 noon, the workers and agents of the respondent-1 attacked the house of CPI (M) worker Nikhil Debnath and threatened to murder him if he worked for CPI (M). The younger brother of Nikhil Debnath was present there when the occurrence took place.

Clause (ii).—On 13-11-89 at about 11 a.m., the workers and agents of the respondent-1 assaulted a CPI (M) worker Dipak Gope while he was distributing voter slips and threatened to murder if he worked for CPI (M).

Clause (iii).—On 5-11-89 at about 10.30 p.m., the workers and agents of the respondent-1 along with his supporters (not named) attacked the house of Swarup Kanti Dey, a CPI (M) worker.

Clause (iv).—At about 3 p.m. of 24-11-89 (after the poll on 22-11-89 and before declaration of the result on 27-11-89) the Congress (I) workers, who also worked as workers and agents of respondent-1, raided the houses of the supporters and agents of CPI (M), namely Nabarun Ghosh, Sujit Pal, Jyoti Rudrapal, and threatened their intimates to leave that area.

Clause (v).—On 19-11-89 at about 10 a.m. the workers and the agent of the respondent-1 raided the house of CPI (M) supporter Promod Kar and set his haystack on fire.

Clause (vi).—On 10-11-89, the workers and agents set fire to the house of an well known CPI (M) worker Prahlad Das. On 12-11-89, the same workers and agents set fire to the house of Santosh Banik, CPI (M) activist, in broad day light. The same workers and agents also set fire to the house of Chinta Singh Debbarma, CPI (M) supporter, on the night of 7-11-89. The criminal acts stated in this clause were done to intimidate the electors not to come out to cast their votes.

Clause (vii), (viii), (ix) and (x) relate to writing or letters of making of complaints to the Assistant Returning Officer concerned by some of the voters 587 in number of the polling station Nos. 19, 20, 21 and 22 of 20 Nachar Assembly segment of the constituency in question stating that the workers and agents of the respondent-1 threatened them to cast their votes in favour of the respondent-1 in their presence; otherwise their houses would be burnt down and they would be assaulted.

Clause (xi).—On 19-11-89, the Congress (I) workers and agents assaulted a CPI (M) worker Shri Satindra Kumar Nath while he was distributing the voter slips and they snatched the voter slips from him and attempted to murder him.

Clause (xii).—The Congress (I) workers attacked the house of Sainar Addya, a member of Sadar Sub-Division of CPI (M) and threatened him on several occasions. On the night of 20-11-89, the said Congress (I) workers attacked the house and the family members of Shri Addya and threatened them not to come to the polling station on the day of poll.

Clause (xiii).—On 9-11-89 at about 10 p.m., the Congress (I) workers who were agents of the respondent-1 attacked the house of CPI (M) worker Shri Jibin Patary and his brother Pinaki Patary was beaten by those agents.

The names of the Congress (I) workers or the workers and agents of the respondent-1 and the number of workers and agents (not named) are given. Time, date and places where the corrupt practices were committed, are also stated in all the clauses except in clauses (xi) and (xii) wherein time or exact time is not given. At the end of each of the clauses it is stated that the corrupt practices were committed by the Congress (I) workers at the instance and with the consent of the respondent-1 and his election agents for furtherance of the prospects of the election of the respondent-1 and materially affecting the result of the election against the petitioner, except in clauses (ix), (x) and (xiii) wherein "agents and workers of the respondent-1" have been stated in place of Congress (I) workers, and others remaining the same. It is also stated that those workers and supporters of CPI (M) were also electors of the constituency in question.

13. As regards the clauses (vii), (viii), (ix) and (x) are concerned, the allegations made thereunder are not the facts contemplated by section 83 of the Act. Those letters may be used as evidence, if they have any evidentiary value, that apart, the names of the electors and dates on which those letters were written have not been stated, and those documents are also not produced. The allegations made in clauses (xi) and (xii) are also vague for non-mentioning time or exact time as to make the respondent-1 understand the case he has to meet. Therefore, the allegations are without particulars. For the reasons stated, the clauses (vii) to (xii) are liable to be struck out apart from the other reasons given below.

14. The allegations made in all the clauses do not indicate how any of the allegations constituted corrupt practices. In all the clauses, except in clause (vi), it has been stated no where that the alleged criminal acts were committed to intimidate the electors. However, in the first part of the para it is stated that the criminal acts were committed for intimidating electors. But facts showing how it had intimidated electors, viz. the material facts and particulars, have not been stated. Mere statement that the criminal acts were committed to intimidate electors is not sufficient. The allegation cannot be construed as one disclosing cause of action. The occurrence alleged in clause (iv) took place on 24-11-89 at about 8 A.M. It was after the poll, but before declaring the result on 27-11-89. It has not been stated as how it was connected with the process of election. In para 9, the material facts and particulars to make a complete cause of action are lacking and, therefore, the allegations made in para 9 are to be struck out on this ground alone.

15. It is stated that the corrupt practices were committed by the workers and agents of the respondent-1. There is a difference between a worker and an agent. The result of the corrupt practices committed by an agent and that committed by a worker is also not the same.

In the case of a worker, if it was committed by him without the consent or a candidate or his election agent, it is not a ground for setting aside an election. In the case of an agent, other than election agent, if the corrupt practice was committed by him even if without the consent of candidate or his election agent, it will be a ground for avoidance of an election if it is further shown that the result of the election, in so far as it concerns the returned candidate, has been materially affected. Therefore, any person working for the benefit or interest of candidate cannot be said to be his worker unless it is shown how he became worker of the candidate or in what manner he was a worker. A person or a supporter, without the knowledge or consent of the candidate or his election agent, may work for the candidate's benefit or interest. However, any person or volunteer commits corrupt practice with the consent of the candidate or his election agent, it will come under the purview of section 100(1)(b) of the Act, as already stated.

16. Concerning the agent, it has already been discussed in the foregoing paras of the judgment. In these clauses it is not stated which of the agents, namely polling agent or any person who can be held as an agent as is provided under the explanation (1) to section 123, other than election agents, committed corrupt practices. In view of the discussions in the foregoing paras of this judgment, if the corrupt practices were committed by an agent, other than the election agent or the polling agent, it must be stated in the petition the facts showing for holding or saying that the person has acted as an agent in connection with the election with the consent of the candidate, or how he was said that he was an agent. The use of the statutory word 'agent' is not sufficient. A mere volunteer or worker even though acting for returned candidate's benefit or interest in connection with an election is not his agent. No fact has been stated in the clauses of para 9 to show how those persons or workers could be held to have acted as agents in connection with the election with consent of the candidate and, therefore, it is not known how those workers and persons were agents of the returned candidate, the respondent-1. Mere statement that the agents of the returned candidate committed the corrupt practices does not disclose a cause of action, as earlier stated, as it would be a mere repetition of the statutory word 'agent'. It also appears that the petitioner does not know whether the alleged corrupt practices were committed by the polling agent, or by any person who can be said to be an agent within the meaning of explanation to section 123, or by both.

17. With regard to the consent of the respondent-1 and/or his election agent, except in the clauses (ix), (x) and (xiii), at the end of each of the clauses, as earlier stated, it is stated that the corrupt practices were committed by the Congress (I) workers at the instance and consent of the respondent-1 and his election agent, and in the clauses (ix), (x) and (xiii) it is stated that the corrupt practices were committed by the agents and workers of the respondent-1 at the instance and consent of the respondent-1. The matter relating to worker and/or agent have already been discussed. The allegations in clause (ix), (x) and (xiii) indicate that the petitioner himself does not know whether the corrupt practices were committed by the agents, or by workers of the respondent-1, or by both. The petitioner does not himself know whether the corrupt practices were committed with the consent or at the instance of the respondent-1, or his election agents, or both. The facts which should have been stated showing whom the returned candidate and/or election agent gave consent, how and in what manner consent was given, and when and in whose presence consent was given, are not stated in para 9 of the petition, i.e. facts showing as to how it was said that the corrupt practices were committed with the consent and/or at the instance of the returned candidate and/or his election agents, have not been pleaded. The pleadings in para 9 are vague for lack of the material facts and particulars and therefore the principle laid down by the Supreme Court in Nihal Singh's case [(1970) 3 SCC 239] is attracted and the statements contained in para 9 is liable to be struck out.

18. Para 10 of the election petition shall be dealt with later in this judgment.

19. The allegations made in para 11 of the election petition relates to the corrupt practices committed on the day of poll (22-11-89) by the workers and/or agents of the respondent-1. In this para, there are 31 clauses or sub-divisions. The allegations made in those clauses are that the Congress (I) workers and/or agents of the respondent-1 committed the following corrupt practices on the day of poll viz. 22-11-89.—

- (1) Seizure or taking possession of polling stations (booth capturing);
- (2) Preventing the polling agents of the petitioner from entering the polling stations;
- (4) Driving out the polling agents of the petitioner of the polling stations;
- (4) Assault upon polling agents of the petitioner inside or outside the polling stations;
- (5) Setting fire to the houses and looting the houses of the CPI(M) supporters;
- (6) Attack upon CPI(M) office on the day of poll;
- (7) Assault on the workers of the petitioner; and
- (8) Threat expressed against, or assault on, the electors.

Names of the Congress (I) workers and agents of the respondent-1 and the number of workers and/or agents (not named), names of the polling agents of the petitioner, date time and place are stated in almost all the clauses. Those clauses in which time or exact time has not been stated are clauses (ii), (iii), (iv) (a), (iv) (b), (v), (vi), (vii), (viii), (ix), (xi), (xiii), (xv), (xviii), (xx), (xxi), (xxii), (last part), (xxiii) and (xxviii). In clause (v), the names of the polling agents and electors have not been given so far as it relates to polling station nos 8/27 and 8/28. It is also stated that those agents of the petitioner were also electors of the constituency in question. In each of the clauses, it is stated that the corrupt practices were committed by the Congress (I) workers and/or agents of the respondent-1 with consent and at the instance of the respondent-1 and/or his election agent in furtherance of the election of the respondent-1 and materially affecting the result of the election against the petitioner.

20. I am inclined to deal with the allegations in respect of the consent of the respondent-1 and/or his election agent as, if the allegations made thereunder are found vague and to be struck out, all the allegations made in para 11 would be struck out. In clause (i), it is stated that the corrupt practices were committed by the Congress (I) workers and agents of the respondent-1 and his election agent at the instance and consent of the respondent-1. In clauses (ii), (iv) (b), (v), (viii) and (xix), it is averred that the corrupt practices were committed by the Congress (I) workers and agents of the respondent-1 with the consent and at the instance of the respondent-1. In clauses (iii), (xi-A) (xii), (xiii), (xiv), (xv), (xvi), (xvii), (xx), (xxi), (xxii), (xxiii), (xxiv), and (xxvii), it is alleged that the corrupt practices were committed by the Congress (I) workers and agents of the respondent-1 with the consent and at the instance of the respondent-1 and his election agents. In clauses (iv) (a), (v) and (vi), it is stated that the corrupt practices were committed by the Congress (I) workers with the consent and at the instance of the respondent-1. In clauses (iv) (c) and (xxvi), it is stated that the corrupt practices were committed by the Congress (I) workers and agents of the respondent-1 without mentioning the consent of the respondent-1 or his election agent. In clauses (vii), (ix), (xi), (xviii), (xxv) and (xxviii), it is stated that the corrupt practices were committed by the Congress (I) workers at the instance and with the consent of the respondent-1 and his election agents. In clause (x), it is stated that the corrupt practices were committed by the leaders and workers of the respondent-1 and his party at his instance and with his consent.

In the beginning of the paragraph, it is stated that the corrupt practices were committed with the consent of the respondent-1 by his agents and workers. But, in the same sub-para, it is stated that the corrupt practices were committed by the agents of the respondent-1 with his consent.

From the above allegations, it appears that the corrupt practices were committed by—

- (1) Election agent;
- (2) Congress(I) workers and agents;
- (3) Congress (I) workers at the instance and with the consent of the respondent-1;
- (4) Congress (I) workers with the consent and at the instance of the respondent-1 and his election agent;
- (5) Congress(I) workers and agents of the respondent-1 with the consent and at the instance of the respondent-1; and
- (6) Congress (I) workers and agents of the respondent-1 with the consent and at the instance of the respondent-1 and his election agent;

in different polling stations and different or similar corrupt practices.

21. It has already been discussed and concluded that there is difference between a worker and an agent, and that the word 'agent' has its own meaning for the purpose of corrupt practices and, therefore, every worker or any person cannot be said that he is an agent in view of explanation (1) to section 123. In para 11, it has not been stated that the corrupt practices were committed by the polling agent. If the corrupt practices were committed by an agent, other than election agent or polling agent, it must be stated in the petition the facts showing for holding or saying that the person or worker has acted as an agent in connection with election with the consent of the candidate, i.e. how he was said that he was an agent as the mere use of the statutory word 'agent' does not disclose any cause of action. In same para (not in the clauses), as already stated, at the beginning of the para, it has been stated corrupt practices were committed by workers and agents of the respondent-1, and in the same sub-para it is stated the corrupt practices were committed by the agents of the respondent-1 with his consent. It has already been concluded that the allegations in clause (i) to (xxviii) show that the corrupt practices were committed by (1) Election agent; (2) Congress (I) workers and agents; (3) Congress (I) workers at the instance and with the consent of the respondent-1; (4) Congress(I) workers with the consent and at the instance of the respondent-1 and his election agent; (5) Congress (I) workers and agents of the respondent-1 with the consent and at the instance of the respondent-1; and (6) Congress (I) workers and agents of the respondent-1 with the consent and at the instance of the respondent-1 and his election agent; in different polling stations and different or similar corrupt practices. It is not known how both the respondent-1 and his election agent could give consent and indicate to commit corrupt practices. The name of the election agent is not mentioned. It appears that the petitioner did or does not know who was the election agent. The allegations in clause (1) shows that the corrupt practices were also committed by the election agent of the respondent-1 with his consent. Section 100(1)(b), although says that "with consent of a returned candidate or his election agent", in the present case it appears that both of them together gave the consent and indicated or requested or desired to commit the corrupt practices. The petitioner himself does not know whether the corrupt practices were committed by the polling agents or election agent, or by any other person who can be said to be an agent within the meaning of explanation (1) to section 123, or by all. The facts which should have been stated showing whom and where, how and in what manner, and when and in whose presence the returned candidate and/or his election agent gave consent and/or asked, are not stated in para 11 of the petition. In other words, facts showing as to how it was said that the corrupt practices were committed with the consent and at the instance of the returned candidate and/or his election agent, have not been pleaded. The pleadings in para 11 are vague for lack of material facts and particulars and, therefore, the principle laid down by the Supreme Court in *Nihal Singh's case* [1970] 3 SCC 239 is attracted and the statements contained in para 11 are to be struck out on this ground alone apart from the reasons discussed below.

22. With regard to the booth capturing, the allegations are made in 23 clauses, namely clauses (iii), (iv)(b), (iv)(c), (v), (vii), (viii), (ix), (x), (xi), (xi-A), (xiii), (xiv), (xv), (xvi), (xix), (xx), (xxi), (xxii), (xxiii), (xxiv), (xxvi), (xxvii) and (xxviii). In these clauses, it is stated that the booth capturing or rigging was done by the Congress (I) workers and agents of the respondent-1 after driving out the polling agents of the polling stations, or preventing them from entering the polling stations, or threatening and/or assaulting them in the polling stations. It is also stated in those 23 clauses that those polling agents were also electors of the constituency in question. The polling station numbers and the clauses in which booth capturing has been alleged are as follows. Polling Station no 6|19-clause (iii); Polling Station No. 7/4-clause (x)(b); polling Station no 7|24 clause (iv)(c); Polling Station nos 9|16 to 9|22-clause (v); polling Station no 15|19 and 15|21-clause (vii); Polling Station no 8|23 and 8|24-clause (viii); polling Station no 7|1 and 7|2-clause (ix); Polling Station no 6|2-clause (x); polling Station no 8|7-clause (xi); Polling Station no 10|19, 10|20 and 10|21-clause (xi-A); Polling Station no 20|8-clause (xiii); Polling Station no 20|16-clause (xiv); Polling Station no 14|21-clause (xv); Polling Station no 5|5, 5|5A and 5|6-clause (xvi); Polling Station no 15|17 and 15|18-clause (xix); Polling Station no 16|5-clause (xx); Polling Station no 18|1 and 18|2-clause (xxi); Polling Station No. 20|14-Clause (xxii); Polling Station no 20|21-clause (xxiii); Polling Station no 32|12-clause (xxiv); Polling Station no 31|1-clause (xxvi); Polling Station no 31|14-clause (xxvii); and Polling Station no 31|13 and 31|13A-clause (xxviii).

23. In clauses (x) and (xi), it has been alleged that the workers and agents of the respondent-1 forcibly entered the polling stations and snatched the ballot papers from the presiding officer and polling officers and forced the polling officer to sign the ballot papers, and thereafter they made marking on the symbol of respondent-1 on hundreds of ballot papers. In clauses (iv)(b), (iv)(c), (xi-A), (xiv), (xx), (xxvii) and (xxviii), it is alleged that the Congress (I) workers and agents of the respondent-1 captured the polling stations or booths and snatched the ballot papers from the presiding officer and/or polling officer and made marking on the symbol of respondent-1 on hundreds of ballot papers. In clauses (iii), (v), (vii), (xii), (xv), (xxi) and (xxii), it is stated that the booths were captured or rigged by the Congress (I) workers and agents of respondent-1 without any particulars i.e. mere allegation or statement without any material facts and particulars. In clauses (viii), (ix), (xvi), (xix), (xxiv) and (xxvi), it is stated that the Congress (I) workers and agents of respondent-1 after capturing the booth, or driving out the polling agents of the polling stations or attacking them there, made marking freely on the symbol of respondent-1 on hundreds of ballot papers. In clause (xxii), it is stated that there was rigging and booth capturing and voters were forced to vote for the respondent-1 by the Congress (I) workers and agents of the respondent-1 without mentioning the names of electors.

24. Under clause (8) of section 123 of the Act "booth capturing by a candidate or his agent or other person" is one of the corrupt practices. Explanation (4) to section 123 provides that for the purpose of clause (8), 'booth capturing' shall have the same meaning as in section 135-A. The relevant portion of the explanation to section 135-A runs in the following terms.

"booth capturing" includes many other things, all or any other following activities, namely :—

- (a) seizure of a polling station or a place fixed for the poll by any person or persons making polling authorities surrender the ballot papers or voting machines and doing of any other act which affects the orderly conduct of elections;
- (b) taking possession of a polling station or a place fixed for the poll by any person or persons and allowing only his or their own supporters to exercise their right to vote and prevent others from voting;

(c) threatening any elector and preventing him from going to the polling station or a place fixed for the poll to cast his vote;

(d) * * *

(e) * * *

25. Before dealing with the allegations relating to 'booth capturing' and/or 'rigging', I feel it necessary to consider about driving out the polling agents of the polling stations, 'preventing them from entering polling station and threat expressed against them. Some of the clauses of para 11 indicates that there were more than one polling agents in a polling station. Those clauses and the polling station numbers are : 2 PAs in PS no. 8/6A-clause (ii); 3 PAs in PS no 6/19-clause (iii); 3 PAs in PS nos 7/8 and 7/9-clause (iv); (a); 2 PAs in PS Nos. 15/19 and 15/21—clause (vii); 3 PAs in PS No. 8/24—clause (viii); 5 PAs in PS Nos. 7/1 and 7/2—clause (ix); 4 PAs in PS no 6/2—clause (x); 3 PAs in PS no 8/7—clause (xi); 6 PAs in PS nos 10/19, 10/21 and 10/21—clause (xi-A); 2 PAs in PS no 14/21—clause (xv); 4 PAs in PS nos 5/5, 5/5A and 5/6—clause (xvi); 4 PAs in PS no 16/5—clause (xx); 2 PAs in PS no 18/1—clause (xxi); and 2 PAs in PS no 31/13—clause (xxviii).

(NB) PS—Polling Station : PA—Polling Agents.

26. Rule 13 of the Conduct of Election Rules, for short the Rules provides the member of the polling agents that may be appointed under section 46 of the Act shall be one agent and two relief agents. Rule 13 indicates that only one polling agent can be inside the polling booth, that is, not more than one polling agent is permitted to enter the polling station and remain there. Therefore, the allegations made in the clauses referred to above that two or more polling agents were in a polling station is vague.

27. In connection with the booth capturing, out of the polling stations referred to above in this paragraph 12 clauses (iii), (vii), (viii), (ix), (xi), (xi-A), (xv), (xvi), (xx), (xxi) and (xxviii), are relevant. Out of 12 clauses, in clauses (vii), (ix), (xi-A) and (xiv), two or more polling agents are named for two or more polling stations, but it has not been stated who of them was/were in which of the polling stations. In other remaining clauses, there were more than two or more. Therefore, the allegations are vague.

Out of clauses in which booth capturing is alleged, in clause (iii), (iv)(b), (v), (vii), (viii), (ix), (xi), (xii), (xv), (xx), (xxi), (xxii) and (xxviii) no time (hour) for driving out the polling agents of the polling stations, or preventing them from entering the polling station, or assaulting them, is given and, therefore, the allegations made thereunder are vague.

For the reasons stated above, the allegations made in the clauses referred to above are vague and the doctrine laid down by the Supreme Court in Nihal Singh's case (*supra*) will be applicable. Therefore, the clauses 3, 4(b), 5, 7, 8, 9, 10, 11, 11A, 13, 15, 16, 20, 21, 23 and 28 are liable to be struck out on these grounds apart from other reasons.

28. The allegations about booth capturing are made in 23, clauses as already stated. Out of the 23 clauses the allegations made in clauses (iii), (v), (vii), (xiii), (xv), (xix) and (xxiii), are concerned, no particulars have been given. A reading of the clauses indicates that it is a mere assertion or statement without any material facts and particulars. Mere use of the expression 'captured' or 'rigged' would not disclose a cause of action. Therefore, these clauses are liable to be struck out on this ground also as these clauses do not disclose any cause of action.

28-A. It has already been discussed and concluded that there is a difference between a worker and an agent and the word 'agent' has its own meaning for the purpose of corrupt practices and that any person or worker cannot be said to be an agent in view of the section 123 of the Act. It has not been stated that the corrupt practices of booth

capturing were committed by the polling agents. The facts showing how a worker or a person who could be said to be an agent has not been stated in the light of discussion above. Mere statement that agents of the returned candidate committed corrupt practices does not disclose cause of action. The petitioner himself does not know whether the corrupt practices of booth capturing were committed by the polling agent or his election agent or by any other agent as is defined under section 123, or by all. It has not been stated the number of electors and votes recorded in favour of the respondent-1. It may be mentioned here that the difference of votes were more than 1,66,000. Except in clause (x) and (xi), in other clauses it has not been stated that any of the polling officers signed ballot papers. The absence of the signature makes the ballot papers invalid under rule 56(2) read with rule 38(l) of the Rules. No particulars have been given how it was affected against the petitioner, or how the election of the respondent-1 was furthered. If the corrupt practices were committed by an agent without the consent of returned candidate it must be further shown that the result of the election, in so far as it concerns the returned candidate has been materially affected. The allegations are vague for lack of material facts and particulars and, therefore, all the 23 clauses relating to corrupt practices referred to above are to be struck out on this ground also.

29. In respect of other corrupt practices, allegations are contained in clauses (i), (ii), (iv)(a), (vi), (xii), (xlii), (xviii), (xxv) and partly in clause (v).

30. Driving out the polling agents of the polling stations and preventing them from entering the polling stations may be classified into two, one in connection with booth capturing which has already been dealt with, and the other not in connection with booth capturing, but under the threat or otherwise which is undue decision. In clauses (ii), (vi) and (xviii), it has been stated that the polling agents were prevented from entering polling stations. In clauses (iv)(a) and (xxv), it is alleged that the polling agents were driving out of the polling stations. In clauses (ii), (vi)(a) and (vi), nothing has been stated about assault. However, in clauses (xviii) and (xxv), it is stated that the polling agents were attacked or assaulted. In the clauses (ii), (iv)(a), (vi) and (vii) no time of occurrence has been stated. In clauses (ii), (iv)(a) and (vii) there were more than two polling stations about which it has already been concluded. It has not pleaded how the acts amounted to corrupt practices. It has not also been stated in whose presence. Therefore, the allegations made in the above clauses are vague.

It is stated in clause (v) that the polling agents and electors were driven out of the polling stations Nos. 8/27 and 8/28. No particulars of the polling agents, workers and agents of the respondent-1, electors and time are not given in this clause. Who were the persons injured are also not stated. No time has also been stated. In that view of the matter, allegations made thereunder are vague in the light of the discussions above. In clause (xii), it is stated that Mongal Debbarma, a worker of the petitioner's party, was assaulted at about 11 AM when he was coming out after casting vote. Bhim Debbarma, a supporter of the petitioners party was also assaulted. Gopal Deb, a polling agent of the petitioner, was also assaulted in the polling station and was driven out of it. In this clause the name of any of the workers or agents of the respondent-1 has not been given. Time of assaulting Bhim Debbarma and Gopal Deb also not been stated. It is also not stated how those assaults amounted to corrupt practices. Therefore, the allegations made thereunder are vague.

As regards attack on the CPI(M) party office, it is stated in clause (xvii) that while the office bearer and workers of the CPI(M) discussing with the electors who have been driven out just before the commencement of poll of the polling station No. 16/19 by the Congress (I) workers and agents of the respondent-1 named in the clause attached the CPI(M) office by throwing two powerful bombs at about 7 A.M. However, some were injured in that bomb blast and some were escaped from it. But it has not been stated in this clause how attack on the CPI(M) office amounted to corrupt practices though it may be criminal act or offence.

The name of the persons who were injured or escaped are not given. The difference between workers and agents has already been discussed. In that view of the matter allegations made thereunder are vague.

As regards the attack on the villages, in clause (i), it is stated thus. A gang of 100 Congress (I) workers led by Ratan Ghosh, a member of Tripura Legislative Assembly, attacked the villagers of three villages namely, Tulakana, Dhumpcherra and East Champamura under S-Khayerpur Assembly Constituency at 6 P.M. on the day of poll and committed criminal act of setting fire to the houses of CPI(M) supporters and looting the house of the persons whose particulars are given in the petition. The said three villages were a strong hold area of CPI(M). Those who accompanied Shri Ratan Ghosh acted as the agent of the respondent-1.

31. As already stated, the hours of poll were from 7 A.M. to 4 P.M. The occurrence took place at 6 P.M. after the hours of poll. It has not been stated how these attacks on the villagers or the houses after the poll hours amounted to corrupt practices and in whose presence the houses and persons were attacked. As regards agent and workers, it has already been discussed. For these reasons, the allegations made thereunder are vague and it is to be struck out.

32. As regards the commission of the above alleged corrupt practices with the consent and at the instance of the respondent-1 and/or his election agent, it has already been discussed in paragraph 21 of this judgement. However in respect of the corrupt practices of the booth capturing it may be added here that corrupt practices were committed on the day of poll in different polling stations at different time. The clauses wherein booth capturing is alleged show that both the respondent-1 and his election agents were present in most of the booths in question. Therefore, particulars, namely when and where, how and in what manner, when and whose presence the respondent-1 and his election agent or any of them gave consent and/or requested, are to be described in the petition. But no such statements are made, as already stated. Therefore, the para 11 is to be struck out, as already stated.

For the reasons stated above, the allegations made in para 11 are vague for lack of material facts and particulars and, therefore, the principle laid down by the Supreme Court in Nihal Singh's case (*supra*) is attracted. In that view of the matter para 11 is to be struck out.

33. The allegations made in para 12 of the petition relates to the corrupt practices committed with the consent of the respondent-1 by his agents and workers in Belonia Sub-division on 22-11-89, the date of poll, by threatening the electors in that Sub-division. Some of the particulars of the alleged corrupt practices are stated in the following clauses.

Clause (i).—In the polling stations of 35-Rajnagar (SC), 30-Belonia and 37-Santibazar Assembly segment, the agents and workers of the respondent-1 captured almost all the polling stations of those Assembly segment and made marks on the symbol of respondent-1 on the ballot papers and inserted them into the ballot boxes by driving out the polling agents of the petitioner and genuine voters of the polling stations and also by not allowing the electors to enter the booths.

In polling station Nos. 35/17, 35/19 and 35/19-A, the electors could not go to stand in the queue due to terrorisation committed by the respondent-1's agents and workers named in the petition. (Particulars of 9 of the electors who could not stand in the queue are given in the petition).

In the first sub-para of clause (i), the names of the electors, workers and agents, the number of electors, time, date and polling stations have not been stated. The allegations made thereunder are mere assertion of booth capturing and, therefore, the allegations are vague. In the second sub-para, time has not been stated. It is also not stated how the allegations made thereunder amounted to any of corrupt practices as is defined under section 123 of the Act, i.e., the necessary

information to present a full picture is lacking. For these reasons, the allegations made thereunder are vague.

There is no clause (ii).

Clause (iii).—The allegations are that on the date of polling at the polling station No. 37/33, 2 polling agents of the petitioner were driven out of that polling station by the Congress (I) workers and the agents of the respondent-1. The same workers and agents forced the CPI(M) supporters who came to cast their votes to leave the polling stations. (Serial numbers of 43 voters are given in the petition).

Time has not been stated. It has already been concluded that there could not be two polling agents in one polling station. How the two polling agents were present in the polling station has not been given. How the driving out of the polling agents and forcing the petitioner's supporters to go away amount to corrupt practice has not been clearly given. Therefore, the allegations are vague.

Clause (iv).—On the day of poll at about 12.30 PM at the polling station No. 36/10 the workers and agents of the respondent-1 drove out one Brajabashi Bhowmik, a polling agent of the petitioner of that polling station and prevented the voters coming to the polling station.

In this clause, the names of the electors, Congress (I) workers and agents of the respondent-1, time and how it amounted to corrupt practices are not stated. Therefore, the material facts and particulars are lacking.

Clause (v).—Four (4) named polling agents of the petitioner of polling station Nos. 37/33 and 37/33-A were prevented from entering the said polling stations by the Congress (I) workers and agents of the respondent-1. Thereafter, the Congress (I) workers rigged the election in the said booths in favour of the respondent-1. In the same manner, the polling agent of the petitioner at the polling station No. 37/32 was driven out of the polling station by the Congress (I) workers and the agents of the respondent-1 and the voters were compelled to cast their votes in favour of the respondent-1 openly.

In the first part of the clause, the names of the workers and agents of the respondent-1, time and manner of committing the corrupt practices are not stated. Who of the polling agents was/were in which of the polling stations is not known. It has already been concluded that there could be only one polling agent in one polling station. It is a mere assertion or general allegation. There is lack of material facts and particulars. In the second part of the clause, the names of the electors, Congress (I) workers and agents of the respondent-1, number of electors and time have not been stated. As already stated, there are different types of corrupt practices, but it has not been stated what kind of corrupt practice had been committed. The allegations are without material facts and particulars.

Clause (vi).—Two (2) polling agents of the petitioner at polling station No. 36/3 made a complaint to the Presiding Officer to the effect that the voters in the serial numbers given in the petition of the said polling station were not the residents of the polling area and that the Congress (I) workers and agents of the respondent-1 impersonated those persons but the Presiding Officer did not accept the objection. (16 serial numbers are given).

The allegations are not the facts contemplated under section 83 of the Act. That apart, the number of voters who had been impersonated is not given in this clause. Document has not been produced to make complete cause of action. Impersonation is not a corrupt practice. The allegation does not disclose a cause of action.

It is stated in clauses (i) and (vi) that the Congress (I) workers and agents of the respondent-1 committed alleged corrupt practices at the instance and with the consent of the respondent-1 and his election agent. In clauses (iii), (iv) and (v), it has been stated that the Congress (I) workers committed corrupt practices with the consent and at the instance of the respondent-1 and his election agent. In each of the

clauses, it is stated that the corrupt practices were committed in furtherance of the election prospect in favour of the respondent-1 and materially affecting the result of the election agents the petitioner. As already stated, at the beginning of the paragraph, it is stated that corrupt practices were committed with the consent of the respondent-1 by his workers and agents. It has already been discussed and concluded that such allegations are vague for want of material facts and particulars. A bare reading of the allegations also show that the petitioner does not know whether corrupt practices were committed by the Congress (I) workers or by his agents or by both, or, consent was given or request was made by the respondent-1 or his election agent or by both. It has also not been stated how the result of the election was affected.

In view of the discussion above, the allegations made in paragraph 12 are vague as they lack material facts and particulars and, therefore, the decision of the Supreme Court in Nihal Singh's case (*supra*) is applicable and the paragraph-12 is to be struck out.

34. The allegations contained in para 13 are these. On the day of the poll in Sadar Sub-Division corrupt practices were committed with the consent and at the instance of respondent-1 by which there were direct interferences with the free exercise of the electoral rights of the electors. The workers and agents of the respondent-1 with his consent threatened the electors of the constituency in question and the person in whom the petitioner as a candidate was interested.

Some of the particulars are given in the clauses of that paragraph.

Clause (i).—In the polling station Nos. 15/9, 15/10 and 15/11 from about 10 A.M., the workers and agents of respondent-1 started attacking voters standing in the queue. (The names of 8 victims are given in the petition and the workers who participated in the attack are also given in the petition). The voters who were attacked could not approach the police as they were instructed by the workers of the respondent-1. However, one local MLA Shri Mitilal Sarkar made a complaint to the Superintendent of Police.

Although 8 electors have been named, it has not been stated who of them was/were electors of which of the three polling stations. The fact necessary to present a full picture of the corrupt practices is not stated. The only statement is that the voters in queue were attacked. The statement does not disclose a complete cause of action and, therefore, the allegations are vague and is to be struck out.

Clause (ii).—On the day of poll at the polling station No. 16/12, voters 55 in number made a complaint in writing stating that they could not cast their votes as the Congress (I) workers numbering about 11 under the leadership of Umesh Das being armed with several lethal weapons compelled them to flee away from the polling station. In the same manner, the Congress (I) workers forced several hundred voters to leave the polling station.

Time and name of any of the voters have not been mentioned. That apart, the allegation is not the fact as envisaged under section 83 of the Act. Therefore, the allegations does not disclose a cause of action and is to be struck out.

Clause (iii).—At the polling station No. 22/22, electors 32 in numbers made a complaint in writing that they could not cast their votes as the Congress (I) workers and agents of the respondent-1 prevented them from entering the polling station and cast their votes. The said Congress (I) workers were also agents of respondent-1 and they were armed with bombs, ram-dao, etc. The above incidents were narrated in writing to the Presiding Officer at about 9 A.M. but the police personnel did not take any action. 11 voters named in the petition and many others were forced to leave by the agents and workers of respondent-1 who were also agents and workers of respondent-1. The workers and agents of respondent-1 also took the voters slip from the hands of the voters telling them that their votes had already been cast by them

Although the names of the workers and/or agents are mentioned, names of all the electors have not been stated. The allegations made are not the facts within the purview of

section 83 of the Act and, therefore, the allegations do not constitute cause of action. The letter or complaint or copy thereof has also not been produced to make a complete cause of action. Therefore, the clause (iii) is to be struck out.

Clause (iv).—At the polling station No. 16/19, the Congress (I) workers drove hundreds of electors in the queue from 6.45 A.M. of the polling station. Hundreds of voters (men and women) of the said polling station were attacked with bombs and other lethal weapons by the agents and workers of respondent-1 under the leadership of Matulal Saha, Minister of State. In respect of corruption and offence, 329 electors of the said booth made written complaint to the Presiding Officer, but the Presiding Officer refused to receive the complaint.

Name of any of the workers or agents and time have not been stated in order to make the respondent-1 understand the case he has to meet. The document also has not been produced to make complete cause of action. Therefore, the allegations are vague, and as such it is to be struck out.

In the first part of the paragraph, it is stated that the corrupt practices were committed with the consent and at the instance of the respondent-1. In clauses (i) and (iii), it is stated that the corrupt practices were committed by the workers and agents of the respondent-1 with the consent and at the instance of the respondent-1. In clauses (ii) and (iv), it is stated that the corrupt practices were committed by the agents and the workers with the consent of the respondent-1 or his election agent. It is stated in all the clauses that the corrupt practices were committed in furtherance of the election prospect of the respondent-1 and materially affecting the result of the election against the petitioner. It has already been concluded that such allegations are vague and are to be struck out. The paragraph 13 can also be struck out on this ground alone.

For the reasons stated above, the allegations contained in paragraph 13 are to be struck out.

35. Before dealing with other remaining paragraph, I am included to deal with paragraph 17. The allegations made in para 17 are in respect of granting loans, sanction of loans etc. by the Government machineries during electioneering for the furtherance of the prospect of the election of the respondent-1. The particulars are given in six (6) clauses. In clause (i), it is alleged that the Block Development Officer Melaghar by his notice dated 26th October, 1989 informed all the Chairmen of the Village Panchayat Development Committee, Panchayat Secretaries, Chairman BAC and members BAC to prepare a list of 50 families who had not received loans earlier from each Gaon Panchayat under IRDP project 1989-90. The notices were issued to the politically nominated bodies of Congress (I) for granting the 50 families members loans. The corrupt practices were committed by the respondent-1 and with his consent. In clause (ii), it is stated that the Sub-Divisional Officer Belonia by a memorandum dated 8th November, 1989 sanctioned Rs. 1000 each to 13 persons under the scheme of housing subsidy to the homeless Muslims of the rural areas at the instance and with the consent of the respondent-1 and his election agent. In clause (iii), it is averred that the Sub-Divisional Officer Belonia, by his letter dated 4th November, 1989 accorded sanction for the payment of Rs. 8,000 each to two persons under the Lower Income Group Housing Loan Scheme 1989-90 at the instance and with the consent of the respondent-1. The allegations contained in clause (iv) is that the Director of Animal Husbandry wrote a letter dated 31st October, 1989 to the Deputy Director Animal Husbandry (West) Government of Tripura issued instructions/guidelines regarding implementation of beneficial scheme under the plan programme and to continue the scheme at the instance and with the consent of the respondent-1. In clause (v), it is alleged that the Minister of State for Animal Husbandry, Shri Bilal Niazi issued a letter dated 4th November, 1989 to the Secretary of Animal Husbandry Department asking him to continue the assistance under the scheme by stating that the proposals for sanction under the Animal Husbandry Department had been received asking the Director to clear the pending proposals initiated by the Deputy Director on 6th November, 1989 with the consent and direction of the respondent-1. In clause (vi), it is alleged that the Sub-Divisional Officer Belonia by his letters mentioned in the clause accorded Rs. 500 each for 195 persons under the RMNP scheme with the direction of the respondent-1.

In all the clauses it is stated that the grant of loan, sanction etc. mentioned in above clauses were in violation of the Act and rules framed thereunder as well as orders and instructions issued by the Election Commission for the furtherance of the prospects of the election of the respondent-1 and materially affecting the result of election against the petitioner.

The allegations made in para 17 of the petition do not disclose how and which provisions of the Act and rules framed thereunder had been violated. The allegations also do not disclose particulars of the orders and instructions issued by the Election Commission. There is no averment how the allegations made in any of the clauses amounted to corrupt practices. It is not stated in para 17 of the petition, whom the returned candidate and/or his election agent give consent or direction, how and in what manner the consent or direction was given, and when and in whose presence the consent or direction was given. It has also not been stated how and where the respondent-1 committed the alleged corrupt practices. In other words, facts showing as to how it was said with the consent and at the instance or direction of the returned candidate and/or his election agents, have not been pleaded. The names of the persons and members of the family mentioned in clauses have not stated. In clause (i) it is stated that the corrupt practices were committed by the respondent-1 and with his consent. If the corrupt practices were committed by the respondent-1, the question of consent does not arise. In other clauses it has not been stated that the corrupt practices were committed. How the election of the respondent-1 was furthered or result of election of the petitioner was affected materially or otherwise. Therefore, the pleadings in clause 17 are vague for want of material facts and particulars and principle laid down by the Supreme Court in Nihal Singh's case (*supra*) is attracted and liable to be struck out.

36. Let me now deal with para 10. The allegations contained in para 10 of the petition are these. On the day of poll (22-11-89) the election was rigged in large scale by a large number of Congress (I) workers and agents of the respondent-1 thereby committing corrupt practices. The election in respect of 363 or more polling stations (polling booths) were rigged. The election was rigged (a) by capturing or seizing polling station, (b) by threatening electors and compelling them to go away from polling station, (c) by assaulting the polling agents, (d) by intimidating electors and driving out the polling agents of the petitioner of the polling stations, etc. It is stated in the petition that the corrupt practices were committed by the Congress (I) workers and agents of the respondent-1 with his consent. By reasons of the corrupt practices committed by the workers and supporters of Congress (I) party in the interest of the respondent-1, the result of the election has been materially affected inasmuch as the electoral rights of nearly 3 lakh voters were interfered with and they were prevented from casting their votes. If these electors could cast their votes freely and fairly, the petitioner would have won by a margin of more than 10,000 votes.

37. No material facts and particulars have been stated in this paragraph. It is summarizing of the statements which are made in other paragraphs of the petition and which had already been dealt with. In the matter governed by section 100 (1) (d)(ii), condition precedent to the avoidance of the returned candidate is proof from the election petition that the result of the election in so far as it relates to the returned candidate, has been materially affected. This is a mere assertion on the part of the petitioner for the simple reason that the casting of votes at an election depends upon a variety of factors and it is not possible for any one to predicate how many of which proportion of votes will go to one or the other of the candidates and the general pattern of polling not only in this constituency but in the whole of India is that all the voters do not always go to the polls (see AIR 1954 SC 513, *Vashist Narain Vs. Dev Chandra*; and AIR 1966 SC 663, *Paokal Vs. Rishang*). The allegation lacks material facts and particulars and, therefore, para-10 is to be struck out.

38. In para 14, it is stated that the election was rigged at the instance of respondent-1 and his election agent. There was no security arrangement in most of the polling stations. The non-arrangement of security force was done at the instance

and with the consent of the respondent-1 so that he might get the dishonest advantage. The booth capturing was re-planned by respondent-1 and his election agent in connivance with the administration and a section of police force.

39. The allegations made in para 15 of the election petition is about the formation of Citizen's Observer Monitoring Body consisting of jurists and academicians mentioned in the petition and report of Sri D. S. Tewatia, Ex-Chief Justice of Calcutta High Court and his report and recommendation to the Election Commission to order a fresh poll of the said parliamentary constituency in question after extensive tour of the State of Tripura.

40. Allegations made in paragraph 16 relates to the appointment of Sri K. K. Biswas, a Joint Secretary to the Government of India, as the Election Observer for the constituency in question by the Election Commission of India. The said observer visited many places on the date of poll and remained till counting of the votes was over. The observer however did not offer any comment regarding his personal experience about the allegations that the election was rigged by the Congress (I) workers.

41. The allegations made in paras 18 and 19 of the election petition are thus. On the date of election Sri Dasarath Deb, Secretary, CPI(M) Tripura State Committee, sent a message to the Chief Election Commissioner of India regarding the wide spread rigging narrated in the foregoing paragraphs. He also informed the Chief Electoral Officer Tripura by a letter dated 22-11-89 to the effect that all the polling booths had been captured by armed Congress (I) workers.

42. The allegations made in paragraph 20 of the election petition is that on 22-11-89 the petitioner wrote a letter to the Returning Officer of the constituency in question requesting him to countermand the election by endorsing a copy of the same to the Electoral Officer enclosing a list of the booths which has been captured and rigged by the Congress (I) workers. The petitioner also on 23-11-89, made a similar request in writing to the Returning Officer of the constituency.

43. The allegations made in para 21 is that Shri Dasarath Das on behalf of the petitioner sent a letter dated 23-11-89 to the Chief Election Commissioner of India declaring that the petitioner's party has decided to boy-cott further process of the election, viz., the counting of votes upto declaration of result of the constituency in question.

44. Paras 14 to 21 can be dealt with together. The allegations made in those paras are of general nature. The allegations are not grounds for avoidance of the election in view of sub-section (1) of section 100 of the Act. The allegations made in those paras do not make out any cause of action.

45. The allegations made in para 22 of the election petition relates to comment on the final result sheet of the election in the constituency in question and about the institution of the case by the petitioner's counting agent Rabindra Kishore Deb Barma and assault on Rabindra Kishore Deb Barma in the counting hall. The name of the person who assaulted the agent and the time of assault have not been given. Therefore, this paragraph is lacking in material facts and particulars for constituting the cause of action for the avoidance of the election under sub-section (1) of section 100 of the Act and therefore this paragraph is to be struck out.

46. The allegations made in para 23 of the election petition relates to the impersonation about which the petitioner has already stated in the foregoing paras of the election petition and which have been dealt with.

47. For the foregoing reasons, the election petition does not disclose cause of action and, therefore, the election petition is rejected. The petitioner shall pay Rs. 500/- as costs of this election petition to the respondent-1.

The Registrar Agartala Bench shall communicate the order in terms of section 103 of the Act.

Sd/-

MANISANA SINGH, (Judge)

नई दिल्ली, 18 फरवरी, 1991

आ.अ. 38.—1990 की निर्वाचन अर्जी सं. 2 में बम्बई उच्च न्यायालय के तारीख 23/25 अक्टूबर, 1990 के निर्णय को लोक प्रतिनिधित्व अधिनियम, 1951 की धारा 106 के अनुसरण में निर्वाचन आयोग इसके द्वारा प्रकाशित करता है।

[मं. 82/द.दी./लो.स./2/90]

आदेश से,

एस.के. पाण्डे, अधर सचिव

New Delhi, the 18th February, 1991

O.N. 38.—In pursuance of section 106 of the Representation of the People Act, 1951 (43 of 1951), the Election Commission hereby publishes the judgement dated 23/25 October, 1990 of the High Court of judicature at Bombay in Election Petition No. 2 of 1990.

[No. 82/DD-HP/2/90]

By Order,

S. K. PANDEY, Under Secy.

IN THE HIGH COURT OF JUDICATURE AT
BOMBAY ORDINARY ORIGINAL CIVIL
JURISDICTION

Election Petition No. 2 of 1990

Ishwarbhai Jagannji Naik . . . Petitioner.

Vs.

1. The Returning Officer,

2. Tandel Devji Jogibhai. . . Respondents.

Mr. I. J. Naik, Petitioner-in-Person.

Mr. R. M. Agarwal with Mr. A. S. Rao and
Mr. K. P. Tipnis for 1st Respondent.

Mr. H. J. Thakkar with Mr. K. D. Shah and
Mrs. U. K. Shah for 2nd Respondent.

CORAM : S. N. VARJAVA J.

23rd/25th October, 1990.

ORAL JUDGMENT :

By this Election Petition, the Petitioner seeks a declaration that the Election of the 2nd Respondent to the House of People from the Daman and Diu Parliamentary Constituency in the Union Territories of Daman and Diu declared on 27th November 1989 is void. This is on the ground that the nomination paper of the Petitioner was improperly rejected by the Returning Officer who is the 1st Respondent herein.

The facts are as follows :—

The Petitioner was appointed as a Lecturer in the Government College at Daman in 1966. His services were terminated under Rule 5(1) of C.C.S. (Temporary Service) Rules 1965 on 10th June 1976. The Petitioner filed Writ Petition No. 84B of 1977

challenging this Order of Termination. This Court by Judgment dated 8th August 1983 set aside the Order of Termination. On 2nd April 1984 the Administrator issued an Order of Reinstatement. The Petitioner joined the services and continued in such service till 3rd January 1988.

During this period as some periods of absence were not regularised, the Petitioner had filed before the Central Administrative Tribunal three Cases bearing Nos. OA 120 of 1986, OA 649 of 1986 and OA 33 of 1988. It may be mentioned at this stage that all these cases were decided in favour of the Petitioner by a common Judgment dated 26th October 1989.

By a letter dated 4th January 1988 the Petitioner gave (what he terms) a notice of resignation. By a letter dated 29th December 1987, addressed to the Bar Council of Maharashtra the Petitioner had already applied for revival of his Sanad with effect from 4th January 1988. The Petitioner avers that with effect from 4th January 1988 he started his practice as an Advocate. The Petitioner has averred that to the knowledge of the 1st Respondent after 4th January 1988 till 31st October 1989, i.e., for a period of 21 months, the Petitioner did not attend his duty as a Lecturer even for a single day. The Petitioner avers that in spite of this, there is no letter calling upon him to resume his duties. The Petitioner also avers that during this entire period no memo has been issued to him demanding explanation for his absence. The Petitioner avers that no disciplinary proceedings have been initiated against him. The Petitioner avers that for this period no salary has been paid to him.

The Petitioner after he started his practise as an Advocate, has appeared on behalf of his wife and other clients in several Writ Petitions and other cases which were attended to by the 1st Respondent in her capacity as the Collector.

The Petitioner has averred that under these circumstances, he did not hold any office of profit under the Government and that he has discontinued service with effect from 4th January 1988.

The Petitioner then avers that in any event on 6th February 1989 he served a notice of voluntary retirement. In that notice, he mentioned that he was serving this Notice as he desired to contest the Parliamentary Election. The Petitioner avers that this Notice was not withdrawn by the Petitioner and that he stood retired with effect from 6th May 1989. It must however be pointed out that before me this point has not been pressed. This advisedly so as by a letter dated 28th April 1989, the Petitioner withdrew the notice dated 6th February 1989.

The Petitioner avers that he gave another notice dated 3rd July 1989. This Notice is relevant for the purpose this Petition and is reproduced herein :

"BY HAND

To
The Hon'ble President
of India,
Rashtrapati Bhavan,
NEW DELHI

From :

Ishverlal J. Naik
M.A., LL.B.,
Lecturer (de jure)
Govt. College,
DAMAN
Pin Code 396 210
Dated : 3rd July
1989.

Subject : Notice of Voluntary Retirement—

Respected Sir,

1. I am hereby giving this 'Notice' of voluntary Retirement under Rule 48-A of the Pension Rules.

2. My birth-date is 23-7-1932. I am completing 57 (fifty seven) years of my life this month. I joined the Class-I Gazetted Post of a Lecturer in the college on 12-5-1966. I have completed 20 (twenty) years of my service in the said post.

3. I am giving this Notice of Voluntary Retirement because I want to contest the ensuing Parliamentary Election.

4. Kindly direct the Director of Accounts, Daman, to fix my pension and to start the payment of pension without delay.

Yours faithfully,
Sd/- Ishverlal J. Naik
03-VII-89
(Ishverlal J. Naik)
Lecturer,
Govt. College, Daman.

Copy to :
The Secretary,
Ministry of Home Affairs,
Govt. of India,
North Block,
Central Secretariat,
NEW DELHI."

The Director of Accounts by a letter dated 28th June 1989 addressed to the Principal, Government College, stated that the office was not in a position to arrive at a qualifying service as there were no orders regulating the period of absence mentioned in that letter. The Principal by his letter dated 29th September 1989 informed the Petitioner that since records of 20 years regular service were not available, the Government was unable to accept his notice of voluntary retirement.

The Petitioner then filed in this Court Writ Petition No. 3954 of 1989. In that Writ Petition on 22nd September 1989, "Rule" was issued. At that time the Court recorded the contention of the Respondents therein that the Petitioner should be nonsuited as the matters were also pending before the Central Administrative Tribunal. The statement of the Petitioner that "de jure" he remained a Lecturer was also recorded.

On the 28th October 1989 the petitioner filed before the Central Administrative Tribunal OA No. 2202 of 1989 for a declaration that he had voluntarily retired with effect from 3rd October 1989.

The Petitioner has averred that the 1st Respondent was at all relevant times; was also the Collector of Union Territory of Daman & Diu and also the Secretary in Department of Education. The Petitioner avers that all the abovementioned facts were within the knowledge of the 1st Respondent in her capacity as Collector and Secretary.

The last date for filing nomination was 30th October, 1989. The Petitioner filed his nomination on that date. The date for scrutiny was 31st October, 1989. The Petitioner avers that on that day no other candidate raised any objection to his nomination. The 1st Respondent as the Returning Officer however objected to the nomination of the Petitioner on the basis of facts within her personal knowledge.

On 31st October 1989, the Petitioner had gone with a letter in anticipation of an objection by other candidates. He submitted that letter to the Returning Officer. In this letter he mentions that he had resigned with effect from 4th January 1988. The 1st Respondent passed an Order in the following terms :

"Office of the Returning Officer, 1-Daman & Diu Parliamentary Constituency, Daman,
Dt. : 31st October, 1989.

ORDER

Today during the scrutiny of nomination forms for candidates for election to 1-Daman & Diu Parliamentary Constituency, the form of Shri Naik Ishvarbhai Jagarji came up for scrutiny. It is within the knowledge of the undersigned that he is still in Govt. Service. Therefore, he is directed to produce the certificate from the Competent Authority stating that he is no longer in active Govt. Service by 11.00 a.m. on 2-11-1989. Till then decision on acceptance of his nomination is kept in abeyance.

Pronounced.

Sd/-

(Nutan Guha Biswas)
Returning Officer, 1-Daman & Diu
Parliamentary Constituency."

On 2nd November 1989, the Petitioner filed a letter emphasizing that he was not in active Government service and that his nomination paper should either be accepted or rejected by a reasoned order.

By her Order dated 2nd November 1989, the 1st Respondent rejected the nomination paper of the Petitioner. This Order is relevant and is reproduced herein :

"Office of the Returning Officer, 1-Daman & Diu Parliamentary Constituency, Daman. Dt. 2-11-1989.

ORDER :

Vide order dated 31st October, 1989 Shri Naik Ishvarbhai Jagajji, a candidate nominated for Election to the House of People from 1-Daman and Diu Parliamentary Constituency was given opportunity to produce certificate from the Competent Authority stating that he is no longer in active Govt. Service by 11.00 A.M. on 2nd November, 1989 as it was within the knowledge of the undersigned that he is still in Govt. service.

Today he appeared before me at the time given above but he failed to produce the required clear certificate from the Competent Authority stating that he is no longer in active Govt. service. He was also heard in the above matter. He has not satisfied the undersigned that he is no longer in active Govt. service, therefore, his nomination paper for above election is rejected.

Pronounced.

Sd/-
(Nutan Guha Biswas)
Returning Officer,
1-Daman & Diu Parliamentary Constituency,
Daman."

The Petitioner filed a Writ Petition No. 4508 of 1989 challenging the Order of Rejection of the nomination paper. The same was however withdrawn as this Court was of the opinion that an Election Petition is the proper remedy. The Petitioner then filed this Petition on 5th January 1990. In the meantime as mentioned earlier, the 2nd Respondent has been declared elected on 27th November 1989.

Both the Respondents have filed their Written Statements. To the specific averments of the Petitioner that the 1st Respondent in her capacity as the Collector and Secretary of Department of Education had knowledge of all the facts mentioned by him, there is no denial by the 1st Respondent. On the contrary the 1st Respondent maintains that to her personal knowledge, the Petitioner continued to be in Government service and that as he did not have 20 years continuous service he could not have retired voluntarily. The 1st Respondent maintains that she was right in rejecting the nomination paper of the Petitioner.

The 2nd Respondent alleges that the Petitioner has not come to this Court with clean hands inasmuch as he has suppressed certain material, viz., the letter dated 28th April 1989 whereby he withdrew his notice of voluntary retirement dated 6th February 89. The 2nd Respondent states that he is not aware of and does not admit the fact that the Petitioner did not attend to his duties with effect from 4th January

1988 and/or that he is not paid any salary and/or that no memo has been issued nor any disciplinary action taken against him. The 2nd Respondent however contends that even presuming that this to be so, the Petitioner could not be deemed to have discontinued in service. The 2nd Respondent denies that the Petitioner had voluntarily retired.

On these pleadings, on 31st July 1990, the following issues were raised .

ISSUES ON BEHALF OF RESPONDENT

NO. 1:

1. Whether the Petitioner had discontinued Government service with effect from 4-1-1988 as alleged in paragraph 15 of the Petition ?

2. Whether the Petitioner had voluntarily retired from the Government service as alleged in paragraphs 28 and 30 of the Petition ?

3. Whether the 1st Respondent rightly rejected the nomination paper of the Petitioner for reasons set out in paragraphs 10 and 11 of the Written Statement of the 1st Respondent ?

4. Whether this Court has jurisdiction to decide Issue Nos. 2 and 3 in view of the provisions of the Administrative Tribunal Act?

5. Whether the Petitioner is entitled to any relief and if so, what ?

6. Generally.

ISSUES ON BEHALF OF RESPONDENT NO. 2 :

1. Whether the Petition is not maintainable in view of the election already having taken place and the 2nd Respondent declared elected ?

2. Whether the Petitioner had discontinued Government service with effect from 4th January 1988 as alleged in paragraph 15 of the Petition ?

3. Whether the Petitioner had voluntarily retired from the Government service as alleged in paragraphs 28 and 30 of the Petition ?

4. Whether the 1st Respondent rightly rejected the nomination paper of the Petitioner for reasons set out in paragraphs 8 and 9 of the Written Statement of the 2nd Respondent ?

5. Whether the Petitioner is entitled to any relief and if so, what ?

6. Generally.

After the Issues were framed, the Petition was adjourned. After the Issues were framed Mr. Thakkar very fairly stated that in view of the law as laid down by the Supreme Court, he would not press Issue No. 1. Prior to the adjournment, some discussion took place. In the discussion Mr. Agarwal reiterated that 1st Respondent's Issue No. 4 should be tried first.

Thereafter this Petition reached hearing on 21st September 1990. The Petitioner produced before this Court a Judgment of the Central Administrative Tribunal dated 9th August 1990 in OA No. 2202 of 1989. In view of this the following two Issues were added and numbered as Issues Nos. 5 and 6 in the Issues of both the Respondents :

"5. Whether the Judgment dated 9th August, 1990 passed by the Central Administrative Tribunal in OA No. 2202 of 1989 is a Judgment in rem and/or binding on the Respondent ?

6. Whether the Order of Returning Officer rejecting the Petitioner's nomination paper on material then available is set at naught by production of other material including the Judgment dated 9th August 1990 of the Central Administrative Tribunal in OA No. 2202 of 1989?"

The Petitioner submitted that on question of voluntary retirement, he would only be relying on the Judgment dated 9th August 1990 in OA No. 2202 of 1989.

The Court, therefore, called upon the parties to first argue Issue Nos. 4, 5, 6 and 7 of the 1st Respondent's Issues and Issue Nos. 5, 6 and 7 of the Respondent's Issues. On these Issues the Petitioner has been argued.

On 21st September 1990, the Petitioner tendered in evidence the abovementioned Judgment dated 9th August 1990. Mr. Thakkar and Mr. Agarwal opposed the application of the Petitioner. They both submitted that the Judgment was inadmissible in evidence and not binding on the Respondents. Mr. Agarwal was asked whether Respondent No. 1 was opposing admissibility and binding effect of this Judgment and at the same time contending that this Court had no jurisdiction to decide this question. At that stage Mr. Agarwal answered 'Yes'. By a separate ruling given on that date, the said Judgment was taken on record subject to the question of probative value being decided subsequently.

These Issues are now answered as follows :—

Issues between Petitioner and Respondent
No. 1 :

- Issue No. 4—In the Negative.
- Issue No. 5—In the affirmative.
- Issue No. 6—In the affirmative.
- Issue No. 7—As per final Order.

Issues between Petitioner and Respondent
No. 2 :

- Issue No. 5—In the affirmative.
- Issue No. 6—In the affirmative.
- Issue No. 7—As per final Order.

REASONS :

On the question of the jurisdiction of the Court Mr. Agarwal submitted that in view of Section 28 of the Administrative Tribunals Act 1985, this Court had no jurisdiction to decide service matters. He submitted that the question whether the Petitioner had discontinued service with effect from 4th January 1988 and/or whether the Petitioner had voluntarily retired with effect from 3rd October 1989 could only be decided by the Central Administrative Tribunal.

Mr. Agarwal relied on the Judgment of the Supreme Court in the case of Union of India v. Parma Nanda reported in AIR 1989 SC 1185. In this Judgment it is held as follows (para 18) :

"From an analysis of Secs. 14, 15, 16, 27, 28 and 29, it becomes apparent that in the case of proceedings transferred to the Tribunal from a civil court or High Court, the Tribunal has the jurisdiction to exercise all the powers which the civil court could in a suit or the High Court in a writ proceeding could have respectively exercised. In an original proceeding instituted before the Tribunal under Sec. 19, the Tribunal can exercise any of the powers of a civil court,

or High Court. The Tribunal thus could exercise only such powers which the Civil Court or the High Court could have exercised by way of judicial review. It is neither less nor more. Because, the Tribunal is just a substitute to the civil court and High Court. That has been put beyond the pale of controversy by this Court while upholding constitutional validity of the Act in S. P. Sampath Kumar v. Union of India (AIR 1987 SC 386)".

Mr. Agarwal also relied on the Judgment of the Supreme Court in the case of S. P. Sampath Kumar v. Union of India reported in AIR 1987 SC 386 wherein the Supreme Court has held that it is possible to set up an alternative institution in place of the High Court. The Supreme Court held that under the Scheme of the Act, the Tribunal took over a part of the existing backlog and a share of the normal load of the High Courts. The Supreme Court held that the Tribunal has been contemplated as a substitute and not as supplemental to the High Court. The Supreme Court held that the Tribunal was not an additional forum. The Supreme Court held that the jurisdiction of the High Court was barred.

Mr. Agarwal also relied upon a Division Bench Judgment of this Court in the case of Rekapally v. Union of India reported in 1986 Mah. L. J. 838 wherein it has been held that the jurisdiction of the High Court is completely ousted in respect of matters for which the Central Administrative Tribunal has been constituted. The High Court held that the provisions of the Administrative Tribunals Act completely excluded the jurisdiction of the High Court even under Article 226 of the Constitution of India. The Division Bench held that in fact there was nothing in the Administrative Tribunals Act to suggest that only a part of the jurisdiction of the High Court was to be excluded.

The Petitioner stated that he had to concede that Mr. Agarwal was right. The Petitioner submitted that apart from the authorities cited by Mr. Agarwal, there were some other authorities which he was duty bound to bring to the attention of the Court.

The Petitioner brought to the attention of the Court the authority of the Supreme Court in the case of Bhagwati Prasad v. Rajeev Gandhi reported in AIR 1986 SC 1534. In this case the Supreme Court held that the powers of the Election Court under the Representation of the People Act, 1951 to decide incidental question did not entitle it to decide questions of citizenship. The Supreme Court held that under the Citizenship Act and the Rules framed thereunder, the Central Government alone was appointed as the authority to decide the question of voluntary acquisition of a citizenship of a foreign country. The Supreme Court held that no other Court or authority had the power to decide that question. The Supreme Court held that this exclusion included the High Court trying matters under the Representation of the People Act, 1951. The Supreme Court held that if a declaration by the Government is produced before a High Court trying an Election Petition, the High Court was bound to give effect to that declaration. The Supreme Court held that even if no such declaration was produced, the High Court could not decide this question and/or independently hold an enquiry into this question.

The Petitioner also drew my attention to another decision of the Supreme Court in the case of State of U. P. v. Mohammad Din reported in AIR 1984 SC 1714. In that case also, the Supreme Court held that the question of citizenship of a person could only be decided by the Central Government and that the High Court even in its jurisdiction under Article 226 of the Constitution of India could not go into this question.

Mr. Thakkar however submitted that Section 28 of the Administrative Tribunals Act has not taken away the jurisdiction of this Court to try incidental questions. He submitted that the Administrative Tribunals Act deals with service matters as between an employer and an employee. He submits that Section 28 bars the jurisdiction of a Civil Court only if the main relief pertains to service matters. He submits that in cases where a proceeding is not between an employer and an employee, a Civil Court can decide a service matter if it arises incidentally. He submits that the jurisdiction of the Civil Courts to decide questions pertaining to service matters arising incidentally has not been taken away. Mr. Thakkar submitted that this Court would not be deciding the question as to whether the Petitioner had discontinued service and/or whether the Petitioner had voluntarily retired as between an employer and an employee. Mr. Thakkar submitted that as between his employer and the Petitioner, these questions could only be decided under the Administrative Tribunals Act. Mr. Thakkar submits that between the Petitioner and these Respondents, this Court can and must decide these questions.

Mr. Thakkar relied upon the Judgment of the Supreme Court in the case of State of T. N. v Ramalingam Samigal Madam reported in (1985) 4 Supreme Court Cases Pg. 10. This was the case under Tamil Nadu Estates (Abolition & Conversion into Ryotwari) Act, 1948. Under Section 11 of that Act a decision of a Settlement Officer was final and binding on all parties. The Supreme Court held that where a statute creates a special right or liability and provides for its determination, it should also lay down that all questions about the said right or liability shall be determined by the Tribunal or Authority constituted by it and that if there is no such provision it will be difficult to infer custer of the Civil Court's jurisdiction. The Supreme Court held that the decision of the Settlement Officer in an enquiry conducted for revenue purposes cannot be regarded as final or conclusive so as to constitute a bar to a Civil Court's jurisdiction adjudicating upon the same issue arising in a Suit for injunction on the basis of title and/or long and uninterrupted possession. The Supreme Court held that even where the finality is accorded to the orders passed by the Special Tribunal one will have to see whether such special Tribunal has power to grant reliefs which Civil Court would normally grant in a Suit and if the answer is in the negative it would be difficult to imply or infer exclusion of Civil Court's jurisdiction. The Supreme Court has however clarified that if there is an express bar of jurisdiction of Court, an examination of the Scheme of the Act to find the adequacy or the sufficiency of the remedies provided may be relevant but is not decisive to sustain the jurisdiction of the Civil Court.

In my view, this Judgment can be of no assistance to Mr. Thakkar. This Judgment does not deal with a provision where the jurisdiction of the Civil Court is excluded. This case deals with a provision which gave a finality to an Order. A finality given to an Order for a particular purpose is completely different from a total exclusion of jurisdiction. Also on the test as laid down by the Supreme Court, in service matters, the Central Administrative Tribunal is competent to grant reliefs which the Civil Court would normally grant. On that basis also there would be ouster of jurisdiction. In this behalf the wording of Section 28 of the Administrative Tribunals Act are relevant. Section 28 provides as follows:—

"28. Exclusion of jurisdiction of courts except the Supreme Court under Article 136 of the Constitution. On and from the date from which any jurisdiction, powers and authority becomes exercisable under this Act by a Tribunal in relation to recruitment and matters concerning recruitment to any service or post or service matters concerning members of any Service or persons appointed to any Service or post, no court except :—

- (a) the Supreme Court ; or
- (b) any Industrial Tribunal, Labour Court or other authority constituted under the Industrial Disputes Act, 1947 (14 of 1947), or any other corresponding law for the time being in force, shall have, or be entitled to exercise any jurisdiction, powers or authority in relation to such recruitment or matters concerning such recruitment or such service matters."

Thus under Section 28, this Court is not entitled to exercise any jurisdiction, power or authority in relation to service matters. This excludes the jurisdiction of other Courts, whether the question arises directly or incidentally. To be noted that in Bhagwati Prasad's case (*supra*) the question as to "citizenship" arose in the Election Petition only incidentally. Also once a Court/Tribunal has been given exclusive jurisdiction it is the decision of that Court, which is binding for all purposes. To hold that other Courts can decide the same questions incidentally would be to indirectly assume jurisdiction even when it is expressly barred. In my view, the submission of Mr. Agarwal and the Petitioner will have to be accepted. By reason of Section 28 of the Administrative Tribunals Act, 1985, this Court, acting as the Election Court under the Representation of People Act has no jurisdiction to decide whether the Petitioner had discontinued service with effect from 4th January 1988 and whether the Petitioner had voluntarily retired with effect from 3rd October 1989. Under the circumstances, Issue No. 4 of the 1st Respondent's issue is answered in the negative.

After Issue No. 4 had been argued, due to certain circumstances the Petition had to be adjourned. Hearing thereafter resumed on 12th October 1990. On that date Mr. Agarwal stated that he had now received instructions to submit to the Orders of the Court so far as Issue Nos. 5 to 7 of Respondent No. 1 were concerned.

On Issue No. 5 of both Respondents, Mr. Thakkar contended that the Judgment dated 9th August 1990, of the Central Administrative Tribunal was not a Judgment in rem or a Judgement of a similar category as contemplated by Section 41 of the Evidence Act. Mr. Thakkar submitted that only Judgments covered by Section 41 of the Evidence Act or by Section 11 of the Civil Procedure Code could be made binding on parties or persons other than those who were parties to the litigation in which the Judgment was passed. Mr. Thakkar submitted that there could be no other category of Judgment which can bind third parties. He submitted that this would be the position even in respect of the Judgment of Courts or Tribunals of exclusive jurisdiction.

Mrs. Thakkar relied upon certain observations made by Hidayatullah J. (as he then was) in the case of R. Viswanathan v. Rukn-Ul-Mulk Syed Abdul Wajid reported in AIR 1963 SC 1. However this is the minority Judgment. It is settled law that observations made in a minority Judgment have no binding effect particularly where they have not been accepted by the majority constituting that Bench.

In this case the question was whether certain properties which had been bequeathed by a deceased were properties of a Joint Hindu Family or individual properties. The Mysore High Court (as it then was) had decided this question. In another suit in Madras, the Judgment of the Mysore High Court was sought to be relied upon. The majority of the Judges came to the conclusion that in respect of the immovable properties, the law of suits applied. They held that the Mysore High Court had no jurisdiction to decide in respect of the properties which were in Madras. On this ground alone the majority of the Judges held that the Judgment of the Mysore High Court was not binding. Hidayatullah J. in his minority Judgment observed as follows (Pgs. 167 to 170) :

"In India, the law as to conclusiveness of judgments is contained in ss. 40-44 of the Indian Evidence Act and ss. 11-14 of the Code of Civil Procedure. Section 41 of the former makes certain special kinds of judgments conclusive, while s. 11 makes judgments in India and s. 13 marks foreign judgments conclusive under certain conditions. I shall first analyse the sections in the Indian Evidence Act. Section 40 makes the existence of a judgment etc. which by law prevents any Court from taking cognisance of a suit or holding a trial, a relevant fact when the question is whether such Court ought to take cognisance of such suit or hold such trial. This enables a judgment, order or decree, whether of a Court in India or a foreign Court to be pronounced for the particular purpose mentioned. Section 42 next mentions that judgments etc. other than those mentioned in s. 41 are relevant if they relate to a matter of public nature relevant to the enquiry, but such judgments, etc. are not conclusive proof of what they state. The illustration shows what is meant by matter of a public nature. Section 43 then lays down that judgments etc., other than those mentioned in ss. 40, 41 and 42, are irrelevant unless the existence of such judgments etc.,

is a fact in issue or is relevant under some other provision of the Evidence Act. Section 44 says lastly that any party to a suit or other proceeding may show that any judgment etc., which is relevant under ss. 40, 41 or 42 and which has been proved by the adverse party was delivered by a Court not competent to deliver it or was obtained by fraud or collusion. Section 41 which I left out, provides for relevance, of certain kinds of judgment and for their conclusiveness. It reads :

'A final judgment, order or decree of a competent Court, in the exercise of probate, matrimonial, admiralty or insolvency jurisdiction, which confers upon or takes away from any person any legal character, or which declares any person to be entitled to any such character, or to be entitled to any specific thing, not as against any specified person but absolutely, is relevant when the existence of any such legal character, or the title of any such person to any such thing is relevant. Such judgment, order or decree is conclusive proof—that any legal character which it confers, accrued at the time when such judgment, order or decree came into operation :

that any legal character to which it declares any such person to be entitled, accrued to that person at the time when such judgment, order or decree declares it to have accrued to that person :

that any legal character which it takes away from any such person ceased at the time from which such judgment, order or decree declared that it had ceased or should cease ;

and that anything to which it declares any person to be so entitled was the property of that person at the time from which such judgment, order or decree declares that it had been or should be his property'. The judgments mentioned in this section are called judgments in rem. As far back as Yarakalamma v. Ankola (2 MHC 276) distinction was made between judgments which bound only the parties to it and judgments which bound also strangers. The terms of Roman Law which divided law into quod ad res pertinet and quod ad personam pertinet furnished the root, and this classic distinction has been taken as the foundation. In Kanhy Lal v. Radha Charan [(1867) 7 WR 338] Peacock, CJ., gave a list of judgments in rem, and that list has been followed in framing, s 41. The list of such judgments is much longer in Taylor on evidence and the present day Private International Law includes all question of status within it. Sir James Stephen is reported to have said that he included only those judgments to which conclusiveness could be given from the point of view of the law of evidence and the conclusiveness at-

taches as to a given matter of fact relevant to the issue, which may be proved from the judgment. That there may be other provisions, of some other law which may also attach conclusiveness to judgment etc., of some other kinds goes without saying. Section 41 does not prohibit the making of other laws. The provisions of s. 11 of the Code of Civil Procedure, for example, go much further than s. 40 or s. 41 of the Indian Evidence Act. Section 40 touches only the fringe of the law of res judicata, but provision for that has been made more exhaustively in s. 11 of the Code of Civil Procedure. The difference between provisions in the law of evidence and the law of procedure is that one deals with the question of proof and the other with a bar of suit. A fact which can be proved from a judgment made conclusive for that purpose need not be proved afresh. The proof of the judgment is enough. But a second suit can only be barred on the principle of res judicata if the law says so; and this bar is regarding the adjudication of a controversy decided before. It is not possible to add to the list of subjects mentioned in s. 41 of the Indian Evidence Act, except by legislation.....”

Even if these observations of Justice Hidayatullah are to be taken as binding, it must be noted that Hidayatullah J. goes on to state as follows (Pgs. 173, 175 and 176) :

“Ordinarily, a judgment upon status is considered to be a judgment in rem; see the classic definition of a judgment in rem in Smith's Leading Cases which has stood unchanged through the many editions. There is, however, no settled definition of 'status'. Paton in his jurisprudence (1946) at p. 256 quoting the analysis of Dr. Allen (Legal Duties) says:—

'Status may be described as the fact or condition of membership of a ground of which the powers are determined extrinsically by law, status affecting not merely one particular relationship but being a condition affecting generally though in varying degree a member's claims and power'.

Dr. Allen calls it

'the condition of belonging to a particular class of persons to whom the law assigns certain peculiar legal capacities or incapacities or both.'

Dr. Allen also adds:—

'We must—distinguish three quite separate things: Status the condition which gives rise to certain capacities or incapacities or both; Capacity the power to acquire and exercise right, and the rights themselves which are acquired by the exercise of capacity'.”

“It must therefore follow that where the source of rights is birth and the domestic relationship leads to rights but not to proprietorship of property the rights can only be said to arise from status.....”

“If the matter had rested with the application of modern theories of Private International Law I would have been tempted to characterize the decision of the Mysore High Court as partly in rem and partly in personam, that dealing with the question of joint or separate acquisition of the Kolar Gold Fields business by Ramalingam as involving decision arising out of status and thus in rem. Such composite actions are not unknown. Story has adverted to them in a passage I have cited earlier and the Court of Appeal in England in *In re Trepca Mines Ltd.* [(1960) 1 WLR 1273] found the action to be partly in rem and partly in personam. The decision of the Mysore High Court was one on status and savoured of a decision in rem. Limited as the Judicial approach is by the existence of s. 41 of the Indian Evidence Act and the Judicial Committee in Appa Trimbaik's case (AIR 1941 PC 524), I venture to express this opinion.....”

Mr. Thakkar next relied upon the decision in the case of *Lazarus-Barlow v. Regent Estates Co. Ltd.* reported in (1949) 2 KB 465. This was a case where in a dispute between a landlord and a tenant, the High Court had held that the properties were not subject to the Rent Restriction Act. In a subsequent litigation between a landlord and some other tenant in respect of the same property, the earlier decision was sought to be relied upon. It was held that that decision was not inter party and could not bind the parties.

Whilst I see force in the argument of Mr. Thakkar that Judgments not inter parties are not binding, in this case I am unable to apply this principle. In this case to accept such an argument would be to leave the Petitioner remedy less. As is set out hereinabove, this Court has no jurisdiction to decide these questions. It is only the Central Administrative Tribunal which can decide these questions. If this Court has no jurisdiction to decide the question whether the Petitioner had discontinued service and/or whether he had voluntarily retired, it would normally follow that a decision on this question, given by the Central Administrative Tribunal must be taken as decisive. As has been seen from the authorities of the Supreme Court, the Central Administrative Tribunal is a Court of concurrent jurisdiction set up as a substitute for the High Court. The Judgment of the Central Administrative Tribunal therefore requires the same respect as would be given to a Judgment of a Court of coordinate jurisdiction.

Also in a case before the Central Administrative Tribunal the only parties would be the Petitioner and the Administrator. Dehors this Petition, for the determination of the question as to whether the Petitioner had discontinued from service and/or voluntarily retired, the 1st and 2nd Respondents are

neither necessary nor proper parties. So far as the status of the Petitioner qua his employment in Government service, it is the decision of the Central Administrative Tribunal which would apply. This status may be required to be proved in other proceedings. If the Court before whom the question arises, is competent to try the question, then of course the submissions made by Mr. Thakkar would hold good. However if that Court has no jurisdiction to decide such a question then the only method of proof of such status would be the earlier Judgment. The earlier Judgment would then become relevant under Section 43 read with Section 13 of the Evidence Act. The previous proceedings would be the transaction by which the right (status) in question was claimed and recognised.

Mr Thakkar however drew my attention to the decision of the Supreme Court in the case of State of Bihar v. Radha Krishna Singh reported in AIR 1983 SC 684. In this case the Supreme Court has laid down as follows :

"120. Taking the first head, it is well settled that judgments of courts are admissible in evidence under the provisions of Sections 40, 41 and 42 of the Evidence Act. Section 43, which is extracted below, clearly provides that those judgments which do not fall within the four corners of Sections 40 to 42 are inadmissible unless the existence of such judgment, order or decree is itself a fact in issue or a relevant fact under some other provisions of the Evidence Act :—

'43. Judgments, etc., other than those mentioned in Sections 40 to 42, when relevant—

Judgments, orders or decrees, other than those mentioned in Sections 40, 41 and 42, are irrelevant, unless the existence of such judgment, order or decree is a fact in issue, or is relevant under some other provision of this Act'.

121. Some Courts have used Section 13 to prove the admissibility of a judgment as coming under the provisions of S. 43, referred to above. We are, however, of the opinion that where there is a specific provision covering the admissibility of a document, it is not open to the Court to call into aid other general provisions in order to make a particular document admissible. In other words if a judgment is not admissible as not falling within the ambit of Sections 40 to 42, it must fulfil the conditions of S. 43 otherwise it cannot be relevant under S. 13 of the Evidence Act. The words 'other provisions of this Act' cannot cover S. 13 because this Section does not deal with judgments at all.

122. It is also well settled that a judgment in rem like judgments passed in probate, insolvency, matrimonial or guardianship or other similar proceedings, is admissible in all cases whether such judgments are inter-

parties or not. In the instant case, however, all the documents consisting of judgments filed are not judgments in rem and therefore, the question of their admissibility on that basis does not arise.....".

Relying upon these observations, Mr. Thakkar has submitted that only Sections 40 to 44 of the Evidence Act deal with Judgments. He submits that unless Judgments fall within the provisions of Sections 40 to 43 of the Evidence Act, they cannot be relied upon or looked at. He submits that the Supreme Court has very clearly laid down that the other provision of the Evidence Act like Section 13 cannot be brought into use for the purposes of looking at Judgments which are not inter-party.

A first reading of this Judgment does give an impression that the Supreme Court has laid down as contended by Mr. Thakkar. In my view, on a proper reading of the Judgment it is clear that the Supreme Court is merely laying down that the Judgments before it, were not Judgments which could be admitted or looked at under Section 42 or Section 13 of the Evidence Act. This is clear if it is noted that Section 43 categorically states that Judgments, Orders or Decrees other than those mentioned in Sections 40 to 42 can be looked at provided they are relevant under some other provision of the Act. Admittedly in the Evidence Act, apart from Sections 40 to 44, there are no other Sections dealing with Judgments. In my view, Supreme Court is not laying down something which is contrary to the plain reading of the Section itself. It must also be noted that in this case the Supreme Court is relying upon the decision of the Privy Council reported in 6 Moors Indian Appeal Pg. 494. The Privy Council has in that case stated that in some cases decisions proceeding from a Tribunal must be given due deference.

However, it must be admitted that the wording used by the Supreme Court is wide. All decisions of the Supreme Court are binding on this Court. Judicial discipline requires that all binding decisions be followed. I would therefore proceed on the footing that the Supreme Court has laid down as contended by Mr. Thakkar. Even then in my view this Judgment confers upon (or takes away from) the Petitioner a legal character or status. This is not just against the Administrator but absolutely. This Judgment declares that the Petitioner has voluntarily retired with effect from 3rd October 1989. This declaration is not just against the Administrator, but also as against the world. In my view, Section 41 of the Evidence Act is not exhaustive of the types of cases covered by it. This is recognised by the Supreme Court in the case of State of Bihar (supra) itself. Law is ever changing. The category of cases declaring "Status" are on the increase. This is particularly so when the trend is to set up Courts of exclusive jurisdiction. Judgments of Courts/Tribunals must receive respect and must be held binding on all Courts/Tribunals who cannot try those questions. They must necessarily be binding on parties who are not necessary/proper parties in the proceedings before the Court/Tribunal of exclusive jurisdiction. Also under Section 43 of the Evidence Act, a Judgment is irrelevant unless the existence of such Judgment in a fact in issue.

In my view, the term "existence of such Judgment is a fact in issue" is not restricted to only these cases, where the question is whether there was such a Judgment. In my view, this phrase includes cases where the question is whether there is a binding Judgment on a fact in issue. In my view, this Judgment would therefore be relevant under Sections 41 and 43 of the Evidence Act.

It must be mentioned that Mr. Thakkar had also relied upon the Judgment in the case of Hollington v. F. Hewthorn & Co. Ltd. reported in (1943) 1 KB 587. In this case it was held that a Judgment given in a criminal trial cannot be used in a civil trial. In my view, this case can be of no assistance to Mr. Thakkar. The principles involved therein can have no application to the facts of the present case.

Mr. Thakkar also relied on the cases of Anil Behari Gosh v. Smt. Latika Bala Desai reported in AIR 1955 SC 566, S. M. Jakati v. S. M. Borkar reported in AIR 1959 SC 282 and Piara Singh v. State of Punjab reported in AIR 1969 SC 961. In my view, these cases are of no assistance to Mr. Thakkar and not relevant on the question involved in this Petition.

Under Section 44 of the Evidence Act, any party to a Suit may show that a Judgment relied upon by the adverse party was delivered by a Court not competent to deliver it or that it was obtained by fraud or collusion. In this case it cannot be and has not been argued that the Central Administrative Tribunal had no jurisdiction. Mr. Thakkar however sought to suggest collusion, by showing that no Written Statement had been filed by the Administrator and that the Central Administrative Tribunal disposed of OA 2202 of 1989 on the same day, that it admitted the same. I am unable to accept this submission. There are many instances where Written Statements are not filed. There may be many reasons for not filing Written Statement. It is for the party alleging to prove collusion. In this case Respondent No. 2 has orally alleged collusion but shown no material. Mere non-filing of Written Statement does not show collusion. It must be remembered that the only reason for not allowing Petitioner to retire was that he did not have qualifying service, i.e., the period of break mentioned in the letter dated 29th June 1989 of the Director of Accounts had not been regularised. The Central Administrative Tribunal had by its Judgment dated 26th October, 1989 in OA No. 120 of 1986, OA 649 of 1986 and OA 33 of 1988 upheld the Petitioner's contention that there were no breaks in service. Under these circumstances, it is possible that the Administrator had no answer to the Petitioner's claim to voluntary retirement and therefore did not file Written Statement. There would be no collusion in this.

Mr. Thakkar next contended that the Central Administrative Tribunal had wrongly exercised its jurisdiction and had not complied with the mandatory provisions of the Act. Mr. Thakkar referred to Section 20(2)(b) of the Administrative Tribunals Act and stated that even though no final Order was passed, the Petitioner had filed OA 2202 of 1989 on 28th October 1989 i.e., before 6 months were over from

3rd July 1989. Mr. Thakkar submitted that the Central Administrative Tribunal should not have entertained OA 2202 of 1989 and should have dismissed the same. In my view there is no substance in this contention. Under Section 20(2)(a), if a final Order is passed by the Government, then an application can be admitted. In this case by letter dated 29th June 1989 of the Director of Accounts and letter dated 29th September 1989, the Petitioner's request for voluntary retirement had been denied. There was thus a final Order and the Petitioner could file OA 2202 of 1989. In any event under Section 20 a discretion is vested in the Central Administrative Tribunal. This discretion has to be judicially exercised. In this case it cannot be said that the discretion has not been correctly exercised.

Mr. Thakkar next contended that on the face of it the Judgment dated 9th August 1990 was erroneous and had not taken into consideration a relevant part and had erroneously decided an aspect of the matter. He submitted that for that reason also the Court should not follow that Judgment and should hold that the Judgment is not binding. In my view, this Court is not sitting in Appeal over the Judgment dated 9th August 1990. It is not open for this Court to look into the merits of the case before the Central Administrative Tribunal. For this reason the submission of Mr. Thakkar cannot be accepted.

However as Mr. Thakkar has argued that point, his submission is set out and dealt with herein. According to Mr. Thakkar Rule 48A of the C.C.S. (Pension) Rules 1972, requires that the notice in writing must state the period or date (not less than 3 months) on which the Government servant retires. Mr. Thakkar submits that the notice dated 3rd July 1989 does not mention any period and is, therefore, bad. He submits that the notice dated 3rd July 1989 cannot be deemed to be a notice under Rule 48A and it should have been so held. Mr. Thakkar submits that the Central Administrative Tribunal has not even considered this aspect of the matter. I see no substance in this submission. It is well settled law that if a Section or Rule requires that a notice be of a particular period, the mere fact that the notice does not mention any period does not make it bad. The notice will be deemed to be of the minimum period required. In this case Rule 48A requires that the notice must be of not less than 3 months. As the notice dated 3rd July 1989 does not mention a period, it would be a notice for the minimum period of 3 months. Thus the Tribunal has correctly held that the Petitioner had voluntarily retired with effect from 3rd October 1989.

Mr. Thakkar next submitted that in para 14 of the Judgment dated 9th August 1990, the Tribunal had held that the Administrator had not refused voluntary retirement to the Petitioner. Mr. Thakkar submitted that this was clearly an erroneous finding. Mr. Thakkar submitted that to the knowledge of the Tribunal by letters dated 29th June 1989 (of the Director of Accounts) and 29th September 1989 (of the Principal) the Petitioner's request for voluntary retirement had been refused. To be noted that this argument contradicts earlier argument based on Section 20 of the Administrative Tribunals Act, i.e., that the Petitioner could not have filed OA 2202 of 1989 as no final Order had been passed and 6 months were not over. Even otherwise, the submission is unacceptable. By letters dated 29th June 1989 and 29th September 1989, the Petitioner's request was not considered only on the ground that the period of qualifying service was not available. Once this was found to be erroneous, it automatically followed that the Petitioner had a right to voluntarily retire. As the right to voluntary retirement had not been denied on any other ground and the Petitioner had qualifying service, the Tribunal was right in holding that the Administrator had not refused voluntary retirement.

Under these circumstances, it will have to be held that the Petitioner is entitled to rely upon the Judgment dated 9th August 1990 in OA No. 2202 of 1989 to prove the fact that he had voluntarily retired from service with effect from 3rd October 1989. Issues Nos 5 of both Respondents are accordingly answered in the affirmative.

The next question which arises is whether the Order of the Returning Officer on material then available is set at naught by production of other material and the Judgment dated 9th August, 1990 before this Court.

In this behalf Mr. Thakkar submitted that the admissions, if any, made by the 1st Respondent in the Written Statement cannot bind the 2nd Respondent. There can be no dispute to this as a general proposition. However, distinction has to be made between admission of facts and a statement by the 1st Respondent of what is within her own personal knowledge. To give an example, the Petitioner has in the Petition stated that he had not attended the duties for a single day from 4th January 1988 till his nomination paper was rejected; that he has not been paid a single day's salary for this entire period; that no memo had been addressed to him nor any disciplinary proceedings taken against him for such non-attendance. The 1st Respondent has not denied all these. These admission would not bind the 2nd Respondent and the Petitioner would have to prove that he did not attend duties for a single day; that he had not been paid any salary; that no memo was addressed to him in the proceedings adopted against him. However, when the Petitioner avers that at the time that the 1st Respondent rejected the nomination paper, she was aware of all this. If this is not denied, then the Petitioner does not have to prove the same. Similarly when the Petitioner alleges that 1st Respondent was aware of OA Nos. 120 of 1986, 649 of 1986 and 33 of 1988 as well as Writ Petition No. 3954 of 1989 and OA No. 2202 of 1989 and this fact is not denied by the 1st Respondent, the Petitioner is not required to prove the same. The statement of what was within her own personal knowledge (on the basis of which she rejected the nomination paper) is something which only the 1st Respondent can state. If she chooses not to deny and/or admit what the Petitioner says, then it is not for the Petitioner to have to prove the same. If under such circumstances the 1st Respondent chooses not to give evidence, the Petitioner's task is to that extent simplified. It must then be assumed that the Petitioner is correct when he states that in her capacity as Collector and Secretary, Department of Education, the 1st Respondent was aware of all facts. In this case not only has the 1st Respondent not denied the Petitioner's statement, she has further set out the facts which were within her knowledge. In the earlier portions of her written statement, the 1st Respondent talks of pending cases whereas in para 10 of the Written Statement the 1st Respondent mentions a pending matter. It is an admitted position that on the relevant date, the only case pending before the Central Administrative Tribunal was OA No. 2202 of 1989. Thus, the 1st Respondent herself states that at the relevant time she was aware of all the above mentioned facts including OA 2202 of 1989. It is on the basis of this knowledge that she rejected the nomination paper. As the 1st Respondent has chosen not to step into the witness box, the Petitioner is entitled to proceed on the footing that all the above mentioned facts were within her knowledge when the 1st Respondent rejected the nomination paper of the Petitioner.

Faced with this situation Mr. Thakkar applied for issue of a Letter of Request to examine 1st Respondent as a witness. By a ruling dated 22nd October 1990 that application has been rejected. Thereafter, at the fag end of his argument Mr. Thakkar applied that the 1st Respondent's name be deleted from this Petition. By a separate order dated 22nd October 1990 that application had been rejected. As is set out 415 GI/91-7.

in that ruling, Mr. Thakkar was fair enough to admit that he was forced to remove this last mentioned application only because the Court was giving to the Petitioner the benefit of the statements made by the 1st Respondent in her Written Statement. As is set out in that ruling, that application was solely with the intention of depriving the Petitioner of the benefit which he had got by the 1st Respondent admitting and stating what was within her own knowledge.

Mr. Thakkar next submitted that the 1st Respondent rejected the nomination paper of the Petitioner on the basis of material then available before her. He submits that this Court must consider whether her decision was right or wrong only on basis of material before her. He submits that subsequent events cannot be taken into consideration. Mr. Thakkar relies upon the letter dated 31st October 1989 (Exhibit 'H'). He submits that the only material placed by the Petitioner before the 1st Respondent was this letter. Mr. Thakkar submits that in this letter the Petitioner has referred only to the letter dated 4th January 1988. He submits that in this letter there is no reference to his voluntary retirement or to his letter dated 3rd July 1989. Mr. Thakkar also relies upon the Order passed by the Returning Officer, the letter dated 2nd November 1989 (Exh. 'K') (addressed by the Petitioner to the Returning Officer) and the Order dated 2nd November 1989 (Exh. 'L'). He submits that the Court must decide only on the basis of material mentioned in these documents. Mr. Thakkar relies upon the case of Raj Narain v. Indira Gandhi reported in AIR 1972 SC 1302 and submits that the resignation of a Government servant can only take effect from the date on which it is accepted by the Government. He submits that even if the letter dated 4th January 1988 is treated as a letter of resignation, it has never been accepted by the Government. Mr. Thakkar submits that the only material before the 1st Respondent being the letter of 4th January 1988 she was right in rejecting the nomination paper of the Petitioner.

Mr. Thakkar also relied upon the case of Narbada Prasad v. Chhaganlal reported in AIR 1969 SC 393. This was a case where the candidate was an elector of a different constituency. He did not file with his nomination paper copies of the electoral roll of that constituency of the relevant portion thereof or the certified copy of the relevant entry as required by Section 33 of the Representation of People Act. The candidate merely produced a certificate from some Officer who was not authorised to issue a certified copy of the electoral roll. The Returning Officer rejected the nomination paper. The Supreme Court upheld the rejection. It held that when a statute requires a particular thing had to be done in a particular manner, if the requirements have not been complied with, then it could not be said that the Order of rejection was not proper. In my view, this case has no relevance to the facts before us. In this Petition the statute does not require the Petitioner to prove that he had voluntarily retired in any particular manner or by a particular time or place. As mentioned earlier, the 1st Respondent was well aware that the Petitioner had challenged the decision of the Director of Accounts not only in the pending Writ Petition but also before the Central Administrative Tribunal.

Mr. Thakkar next relied upon the authority of the Supreme Court in the case of *Brij Mohan v. Sat Pal* reported in AIR 1985 SC 847. In this case there was a defect in the nomination paper in as much as part numbers of the electoral roll in respect of the candidate and the proposer were incorrectly mentioned. On the date of the scrutiny the candidate could not satisfy the Returning Officer and point out the correct numbers. The nomination paper was accordingly rejected. The Supreme Court held that under Section 33(5) of the Representation of the People Act read with Rules 2(f) and 4 of the Conduct of Election Rules the responsibility for producing documentary evidence of registration as elector in a different constituency rests entirely on the candidate. The Supreme Court held that the candidate must be so prepared as to meet any objections that may be raised. The Supreme Court held that as the candidate had failed to satisfy the Returning Officer, it could not be said that rejection was bad. This again was on the footing that the statute required the candidate to satisfy the Returning Officer that he was an elector and the candidate had failed to discharge that burden. In my view, this principle has no application to the facts of this Petition.

Mr. Thakkar then relied upon the case of *Lila Krishan v. Mani Ram Godara* reported in AIR 1985 SC 1073. In this case the serial number of the proposer did not tally with the serial number mentioned in the voters' list. (On day fixed for scrutiny). The candidate remained absent. The Returning Officer could not correlate and identify the proposer. The nomination paper was rejected. The Supreme Court held that there was a statutory duty to clarify the discrepancy and such statutory duty not having been complied with, the rejection was proper. As set out earlier, this principle has no application to the present case.

Mr. Thakkar next relied upon the case of *Man Mohan v. Shailbala Roy* reported in AIR 1965 Patna 277. In this case, the nomination paper was rejected on the ground that the candidate held an office of profit. The facts were that by a Notification issued under the Bihar Land Reforms Act, the estate of which the candidate was a Ghatwal, vested in the Government. In spite of the Notification, the candidate did not hand over the charge of the estate. He filed a Suit challenging the right of the Government to take over the estate. Before the Returning Officer, the candidate asserted that the Government had no right to take over charge of the estate. Because of this assertion the Returning Officer rejected the nomination paper. In the Petition, an argument was advanced that once the notification was issued even though the candidate had not handed over charge, he had ceased to be a "Ghatwal"; and therefore, he could not be said to have been holding any office of profit. On this footing it was argued that the rejection was improper. The Court accepted this argument. It was however held that as the candidate himself had asserted before the Returning Officer that the Government had no right to take over charge of the estate, the Returning Officer was correct in rejecting the nomination paper. It was held that as the Order was correct at the time it was made, it could not be affected by any subsequent declaration. However, the Court has clarified that its decision was based on the statement of the candidate before the Returning Officer. It was clarified that if such a state-

ment had not been made, the decision of the Returning Officer would have had to be set aside.

Mr. Thakkar submitted that the last mentioned case is identical to the facts of this Petition. He submitted that before the 1st Respondent the Petitioner had only relied on the fact that he had resigned on 4th January 1988. Mr. Thakkar submits that the Petitioner had not drawn the attention of the 1st Respondent to any other fact. Mr. Thakkar submits that under these circumstances it cannot be said that the decision of the 1st Respondent was wrong on the date that it was made. I am unable to accept this argument. This argument overlooks the fact that the decision of the 1st Respondent was based not just on the letter dated 31st October 1989 but upon facts within her knowledge. These were facts known to her in her capacity as the Collector and Secretary, Department of Education. She had knowledge that the Petitioner had not attended duty on a single day with effect from 4th January 1988; that no memo had been issued to him nor any disciplinary proceedings adopted; that no salary had been paid to him for the last 21 months; that he had filed before Central Administrative Tribunal OA Nos. 120 of 1986, 649 of 1986 and 33 of 1988 which were decided in his favour on 26th October 1989. The knowledge also included the knowledge of the letter dated 3rd July 1989; the letter of Director of Accounts dated 29th June 1989 and the letter dated 29th July 1989 of the Principal and the fact that he had filed Writ Petition No. 3954 of 1989 and OA No. 2202 of 1989. It is with knowledge of all these facts that the 1st Respondent has rejected the nomination paper. To the knowledge of the 1st Respondent, the question whether the Petitioner had voluntarily retired with effect from 3rd October 1989 was sub judice in both OA No. 2202 of 1989 and in Writ Petition No. 3954 of 1989. In spite of this knowledge, she rejected the nomination paper. In my view, the only question for consideration is whether prior to 2nd November 1989 (when the nomination paper was rejected) the Petitioner had voluntarily retired or not. As 1st Respondent has rejected the nomination paper of the Petitioner on facts within her knowledge, the Petitioner not mentioning these facts in his letters dated 31st October 1989 and 2nd November 1989, makes no difference. Under Section 100(1)(c) this Court has to form its opinion today, but that opinion has to be based on state of things as on 2nd November 1989. It is now established that the Petitioner had voluntarily retired with effect from 30th October 1989. If that be so, then the rejection of Petitioner's nomination paper on 2nd November 1989 was improper.

In this opinion I am supported by two authorities of the Supreme Court. In the case of *Manni Lal v. Parmal Lal* reported in (1971) 1 SCR 798 the nomination paper had been rejected on the ground that the candidate was disqualified. On the date of scrutiny the candidate stood convicted under the Indian Penal Code. Subsequent thereto an Appeal filed by the candidate against that conviction was allowed and the conviction set aside. The Supreme Court held that the Order of acquittal had the effect of retrospectively wiping out the conviction. The Supreme Court held that the opinion whether the candidate was disqualified is to be formed by the High Court at the time of pronouncement of the Judgment in the Election

Petition. The Supreme Court held that at the time that the High Court was pronouncing its Judgment it had before it the Order of acquittal. The Supreme Court held that the High Court was right in holding that Respondent was not disqualified.

An identical question arose in the case of V. G. Shukla v. Purshottamal Kaushik reported in (1981) 2 SCC 84. Here also on the date that the nomination paper was rejected, the candidate suffered a disqualification by reason of a conviction. In an Appeal, this conviction was subsequently set aside. This was however before the Election Petition was heard. The Supreme Court confirmed the stand of the High Court that at the time it had to form its opinion, there was no conviction. The Supreme Court confirmed the principle that the High Court must form its opinion on the date that it is giving its Judgment and the opinion must be based on the state of affairs that existed at the time the nomination paper was rejected.

In my view, these two cases squarely cover the question involved in the present Petition. Today when this Court has to give its opinion, it is established that the Petitioner stood voluntarily retired with effect from 3rd October, 1989. If that be so, then the decision of the Returning Officer (1st Respondent) taken on 2nd November 1989 rejecting the nomination paper on the ground that to her knowledge Petitioner was in Government service was improper and cannot be sustained.

It must be mentioned that Mr. Thakkar had submitted that abovementioned two cases were under Section 100(1) (d) and that the principles laid down therein could not apply to a case under Section 100(1)(c). In this behalf Mr. Thakkar had relied upon "para 39" of the last mentioned Judgment. The Supreme Court has stated that difficult and anomalous situations may arise if this Rule is applied to a converse hypothetical case. However it is to be noted that the Supreme Court has not stated that this Rule cannot be applied to a converse case. There can be no doubt that the application of this principle would depend on facts of each case. On the facts of this case, the 1st Respondent was aware that there was a possibility of either the High Court or the Central Administrative Tribunal coming to a conclusion that the Petitioner had voluntarily retired. In spite of this she rejected the nomination paper. If therefore the Court/Tribunal of competent jurisdiction has held that the Petitioner had voluntarily retired and this decision is available at the time that the High Court is delivering its Judgment, then it must be held that the rejection was improper.

Under these circumstances, Issues No. 6 of both the Respondents are answered in the affirmative.

As it is now held that the Petitioner had voluntarily retired with effect from 3rd October 1989 and that his nomination paper has been improperly rejected, I saw no reason in allowing the parties to lead any evidence on the other Issues, viz., whether Petitioner had discontinued service with effect from 4th January 1988. In my view, this would be an exercise in futility leading to a waste of time of this Court. It must however be mentioned that Petitioner was ready to lead evidence in this Issue.

Under the circumstances, the Petition is made absolute in terms of prayers (A)(i), (A)(ii) and (B). There will however be no Order as to costs of the Petition.

Mr. Thakkar applies for stay of this Judgment for a period of eight weeks from today. The Petitioner submits that the stay, if any, must only be on obtaining an undertaking from the 2nd Respondent that he shall not participate in the proceedings of or vote in the Lok Sabha and that he shall attend the Lok Sabha only to record his presence. Mr. Thakkar draws my attention to the observations of the Supreme Court in the case of Kirpal Singh v. Uttam Singh reported in AIR 1986 SC 300 wherein the Supreme Court has observed that if an election is set aside for no fault of the successful candidate but on the ground that some one else, nomination paper has been improperly rejected, it would be appropriate to grant an absolute stay. This is so that the Constituency may not go unrepresented for no fault of the elected or the electorate. Not only am I bound by the observations of the Supreme Court, but I am in complete agreement with the same. In this case the 2nd Respondent is a victim of circumstances beyond his control. His election is being set aside not due to any fault of his, but due to the nomination paper of the Petitioner being improperly rejected. Under these circumstances, the operation of this Judgment is absolutely stayed for a period of eight weeks from today.

I also direct that at the end of eight weeks this decision be intimated to the Election Commission as well as to the Speaker of the Lok Sabha _____ and also that an authenticated copy of this decision be sent to the Election Commissioner.

HIGH COURT

U.B.C.J.

ELECTION PETITION NO. 2 of 1990

Ishvarbhai Jaganshi Naik. ... Petitioner
V/s.

The Returning Officer. and Ant. Respondent

Certified copy of

Oral Judgment Delivered by the Hon'ble Justice Shri S. N. Variava, on 23rd and the 25th day of October, 1990.

नई दिल्ली, 21 फरवरी, 1991

आ.अ. 39.—निवाचन आयोग 1980 की नियमित अर्जी सं. 6 व 9 में पटना उच्च न्यायालय जुड़ी-केसर के तारीख 25 मई, 1984 के मिर्य के विरुद्ध वाचिल की गई 1984 की सिविल अपील सं. 2567 और 2568 (एन.सी.ई.) में तारीख 17 दिसम्बर, 1990 को दिए गए भारत के उच्चतम न्यायालय के शादेश को लोक प्रतिनिधित्व-प्रधिमियम, 1951 (1951 का 43) की धारा

116A की उप घारा (2) के खण्ड (ख) के अनुसरण में
इसके द्वारा प्रकाशित करता है।

[सं. 82/बिहार/(6&9/80)/84]

आदेश से,
बाबू राम, अधिकारी सचिव

New Delhi, the 21st February, 1991

O.N. 39.—In pursuance of clause (b) of sub-section (2) of Section 116-C of the Representation of the People Act, 1951 (43 of 1951), the Election Commission of India hereby publishes the order dated 17th December, 1990 of Supreme Court of India in Civil Appeal Nos. 2567 and 2568 (NCE) of 1984 arising from the judgment dated 25th May, 1984 of the High Court of Judicature at Patna in Election Petition Nos. 6 and 9 of 1980.

[No. 82/BR/(6&9/80)/84]

By Order,
BABU RAM, Under Secy.

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

Civil Appeal Nos. 2567-2568 (NCE) of 1984

Shri Kamla Mishra Madhukar Appellant
Versus

Shri Rajendra Prasad Gupta and Anr. Respondents.

ORDER

Counsel on both sides state that the appeals have become infructuous on account of lapse of time and in between two general elections have taken place.

The appeals are accordingly dismissed. No costs.

Sd/- C.J.L.

A. M. AHMADI, J.

New Delhi, the
17th December, 1990